

CCASE:
SOL (MSHA) V. KIAH CREEK MINING
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TTEXT:

June 23, 1993

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. KENT 92-964
	:	
KIAH CREEK MINING COMPANY	:	

BEFORE: Holen, Chairman; Backley, Doyle and Nelson, Commissioners

ORDER

BY THE COMMISSION:

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et. seq. (1988)("Mine Act"). On June 1, 1993, Chief Administrative Law Judge Paul Merlin issued an Order of Default to Kiah Creek Mining Co. ("Kiah Creek") for failing to answer the proposal for assessment of civil penalty filed by the Secretary of Labor or the judge's March 23, 1993, Order to Show Cause. The judge assessed the civil penalty of \$94 proposed by the Secretary. For the reasons that follow, we vacate the default order and remand this case for further proceedings.

On June 7, 1993, the Commission received a letter addressed to Judge Merlin from Kiah Creek's mine manager, Mike Gipson, requesting reconsideration. Enclosed documents include: (1) a notice of appearance form dated November 27, 1992; (2) a letter dated November 27, 1992, from Gipson to the Commission's executive director, requesting reduction of the proposed civil penalty; (3) a letter dated March 30, 1993, to the Department of Labor's Regional Solicitor's Office in Nashville, in which Gipson refers to the judge's show cause order and encloses a copy of Kiah Creek's notice of appearance; and (4) a return receipt indicating delivery of a document from Kiah Creek to the regional solicitor's office on April 1, 1993.

The judge's jurisdiction over this case terminated when his decision was issued on June 1, 1993. 29 C.F.R. 2700.69(b). Under the Mine Act and the Commission's procedural rules, relief from a judge's decision may be sought by filing a petition for discretionary review with the Commission within 30 days after its issuance. 30 U.S.C. 823(d)(2); 29 C.F.R. 2700.70(a). We deem Kiah Creek's June 7 letter to be a timely filed Petition for Discretionary Review, which we grant. See, e.g., Middle States Resources, Inc., 10 FMSHRC 1130 (September 1988). On the basis of the present record, we are unable to evaluate the merits of Kiah Creek's position. In the interest of justice, we remand this matter to the judge, who shall determine whether default is

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warranted. See Hickory Coal Co., 12 FMSHRC 1201, 1202 (June 1990).

For the reasons set forth above, we vacate the judge's default order and remand this matter for further proceedings.

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner