

CCASE:
SOL (MSHA) V. COUGAR COAL
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June 23, 1993

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. KENT 92-878
	:	
COUGAR COAL COMPANY, INC.	:	

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 May 20, 1993, Chief Administrative Law Judge Paul Merlin issued an Order of Default to Cougar Coal Company, Inc. ("Cougar") for failing to answer the August 28, 1992, notice of proposed civil penalty filed by the Secretary of Labor or the judge's February 22, 1993, Order to Show Cause.(Footnote 1) The judge assessed the civil penalty of \$1,008 proposed by the Secretary. For the reasons that follow, we vacate the default order and remand this case for further proceedings.

On June 1, 1993, the Commission received a copy of a letter from Cougar dated September 8, 1992, disputing, inter alia, the Secretary's proposed civil penalty. While this letter appears to be an answer to the Secretary's proposal for assessment of civil penalty, it was forwarded to the Commission without explanation or assertion that it had been previously sent to either the Commission or the Secretary of Labor.

The judge's jurisdiction over this case terminated when his decision was issued on May 20, 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 Cougar's 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).

1 As noted by the judge in his Order of Default, the file contains a signed return receipt for the Order to Show Cause.

On the basis of the present record, we are unable to evaluate the merits of Cougar's position. In the interest of justice, we remand this matter to the judge, who shall determine whether default is 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 consistent with this order.

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner