

CCASE:
SOL (MSHA) V. LYNX COAL
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June 29, 1993

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. KENT 92-776
	:	
LYNX 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 Lynx Coal Company, Inc. ("Lynx") for failing to answer the August 17, 1992, notice of proposed civil penalty filed by the Secretary of Labor and the judge's Order to Show Cause of February 4, 1993.(Footnote 1) The judge assessed the civil penalty of \$5,500 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 copy of a letter from Lynx, dated February 19, 1993, addressed to an attorney in the Office of the Regional Solicitor of the Department of Labor, Nashville, Tennessee. The letter questions the Secretary's proposed civil penalty and may have been intended to answer the Secretary's proposal for assessment of civil penalty. The letter was forwarded to the Commission without explanation.

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 Lynx'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.

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On the basis of the present record, we are unable to evaluate the merits of Lynx'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).

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner