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SOL (MSHA) V. NAVAJO CONCRETE  
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August 10, 1993

SECRETARY OF LABOR, :  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA) :  
: v. : Docket No. WEST 92-771-M  
: NAVAJO CONCRETE 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 July 7, 1993, Chief Administrative Law Judge Paul Merlin issued an Order of Default to Navajo Concrete Inc. ("Navajo") for failing to answer the proposal for assessment of civil penalties filed by the Secretary of Labor or the judge's February 19, 1993, Order to Show Cause. The judge assessed civil penalties in the sum of \$1,371.(Footnote 1) For the reasons that follow, we vacate the default order and remand this case for further proceedings.

On July 21, 1993, the Commission received a letter dated July 15, 1993, from Albert Lewis, Navajo's president, in which Mr. Lewis states that Navajo had sent a reply on October 21, 1992, to J. Ogden, an attorney in the Department of Labor's Office of the Regional Solicitor in Los Angeles, California. Under the Commission's procedural rules, the party against whom a penalty is sought must file its answer with this Commission within 30 days of service of the proposal for assessment of civil penalties. 29 C.F.R. 2700.5(b), .2

The judge's jurisdiction over this case terminated when his decision was issued on July 7, 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 of its issuance. 30 U.S.C. 823(d)(2); 29 C.F.R. 2700.70(a). We deem

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1 The Secretary proposed that civil penalties in the sum of \$1,571 be assessed against Navajo. As noted in the judge's show cause order, on November 18, 1992, the Commission received a memorandum from the Office of Assessments for the Department of Labor's Mine Safety and Health Administration ("MSHA") indicating that \$200 of the penalties had been paid.

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Navajo's July 15 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 Navajo'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.

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner