

CCASE:
SOL (MSHA) V. TEXAS GRAVEL, INC.
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September 8, 1993

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. CENT 93-104-M
	:	
TEXAS GRAVEL, 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 August 9, 1993, Chief Administrative Law Judge Paul Merlin issued an Order of Default to Texas Gravel, Inc. ("Texas Gravel") for failing to answer the proposal for assessment of civil penalties filed by the Secretary of Labor or the judge's May 19, 1993, Order to Show Cause. (Footnote 1) The judge assessed civil penalties in the sum of \$2,100. For the reasons that follow, we vacate the default order and remand this case for further proceedings.

On August 30, 1993, the Commission received from Toribio Palacios, Texas Gravel's counsel, a motion to set aside the default order. Mr. Palacios explained that Texas Gravel had inadvertently failed to file an answer and, because negotiations with the Secretary's Office of the Solicitor had already begun, the Secretary was on notice that Texas Gravel wanted a hearing in this case.

The judge's jurisdiction over this case terminated when his decision was issued on August 9, 1993. Commission Procedural Rule 69(b), 58 Fed. Reg. 12171 (March 3, 1993), to be codified at 29 C.F.R. 2700.69(b) (1993). 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 Texas Gravel's motion to be a timely filed Petition fo

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

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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 Texas Gravel'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