

CCASE:
SOL (MSHA) V. MID-CONTINENT RESOURCES
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October 25, 1993

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. WEST 92-717
	:	
MID-CONTINENT RESOURCES, INC.	:	
	:	

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

ORDER

BY THE COMMISSION:

In this civil penalty proceeding, arising under Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1988)("Mine Act" or "Act"), the Secretary has proposed penalties for 20 citations and orders issued to Mid-Continent Resources, Inc. ("Mid-Continent"). The proposed penalties were reassessed by the Secretary as a result of the Commission's decision in Drummond Co., Inc., 14 FMSHRC 661 (May 1992). On January 19, 1993, the Secretary and Mid-Continent filed with Administrative Law Judge August F. Cetti a Joint Motion to Approve Settlement ("Joint Motion"). The parties agreed to reduce the proposed penalty for each citation and order by 40%. Included in the Joint Motion was Order of Withdrawal No. 3412700, issued under section 104(d)(2) of the Mine Act, which charged Mid-Continent with a violation of 30 C.F.R. 75.400. Judge Cetti approved the settlement on February 8, 1993.

On September 7, 1993, the Secretary filed with the Commission's Docket Office a "Corrected Joint Motion to Approve Settlement" ("Corrected Motion"). The Corrected Motion states that "[b]y error, Order No. 3412700 issued May 1, 1990, for an alleged violation of 30 C.F.R. 75.400, which is the subject matter of a discretionary review now pending and at issue before the Federal Mine Safety and Health Review Commission ... was included in this reassessment case." The parties further state that "this agreement does not include Order No. 3412700 issued May 1, 1990, which is pending" review.

The judge's jurisdiction over these cases terminated when his Decision Approving Settlement was issued on February 8, 1993. Commission Procedural Rule 69(b), 58 Fed. Reg. 12158, 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

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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). Neither party filed a petition for discretionary review within the 30-day period and the Commission did not sua sponte direct this case for review. Thus, the judge's order became a final decision of the Commission 40 days after its issuance. 30 U.S.C. 823(d)(1). Under these circumstances, we deem the Corrected Motion to be a request for relief from a final Commission decision incorporating a late-filed petition for discretionary review. See, e.g., Island Creek Coal Co., 15 FMSHRC 962, 963 (June 1993).

Guided by Fed. R. Civ. P. 60(b)(1) & (6), the Commission has afforded relief from final judgments on the basis of inadvertence, mistake, and other reasons justifying relief. See, e.g., Klamath Pacific Corp., 14 FMSHRC 535, 536 (April 1992). The Corrected Motion states that the parties settled Order No. 3412700 in error. Accordingly, we conclude that the parties should be granted relief from Judge Cetti's Decision Approving Settlement.

For the reasons set forth above, we reopen this proceeding, grant the Corrected Motion and vacate that part of the Judge's decision that approved settlement of Order No. 3412700.

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner