

CCASE:
SOL (MAHS) V. MARTIN MARIETTA AGGREGATES
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February 8, 1994

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
:
v. : Docket No. YORK 93-126-M
:
MARTIN MARIETTA AGGREGATES :
:

BEFORE: Holen, Chairman; Backley and Doyle, Commissioners

ORDER

BY THE COMMISSION:

In this civil penalty proceeding, arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1988)("Mine Act"), the Secretary of Labor proposed penalties for eight citations issued to Martin Marietta Aggregates ("Martin Marietta"). On November 3, 1993, the Secretary filed with Administrative Law Judge Gary Melick, on behalf of the parties, a Motion to Approve Settlement. The Secretary's motion stated that Martin Marietta had agreed to pay proposed penalties in the amount of \$50 for each violation and that the total sum due was \$350. The judge approved the settlement motion by decision dated November 4, 1993.

On January 11, 1994, the Secretary filed with the judge a Motion to Amend Decision Approving Settlement ("Motion to Amend"). Judge Melick forwarded the Motion to Amend to the Commission. As grounds for the motion, the Secretary asserts that, due to clerical error, the parties' settlement agreement incorrectly set forth the total amount of the settlement for the eight violations as \$350 rather than \$400. The Secretary states that Martin Marietta has no objection to his Motion to Amend.

The judge's jurisdiction in this matter terminated when his Decision Approving Settlement was issued on November 4, 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

¹Commissioner Nelson participated in the disposition of this case. He passed away before the order was issued. Pursuant to section 113(c) of the Mine Act, 30 U.S. C. 823(c), we have designated ourselves as a panel of three members to exercise the powers of the Commission.

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procedural rules, relief from a judge's decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. 823(d)(2); 29 C.F.R. 2700.70(a). The Secretary did not file a timely 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 decision 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 Motion to Amend 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).

Under 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 record reveals that, due to a calculation error, the Secretary's settlement motion mistakenly proposed a total penalty of \$350. The Secretary seeks to correct this error and asks that the judge's decision be amended to assess a penalty of \$400; Martin Marietta does not oppose the motion. Accordingly, we conclude that the Secretary's motion should be granted.

For the reasons set forth above, we reopen this proceeding, grant the Motion to Amend and modify the judge's decision to assess Martin Marietta a total penalty of \$400.

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner