

CCASE:
SOL (MSHA) v. OAKWOOD MINING
DDATE:
19940325
TTEXT:

March 25, 1994

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	CIVIL PENALTY PROCEEDING
Petitioner	:	
	:	
	:	DOCKET NO. KENT 93-576
	:	
v.	:	
	:	
	:	
OAKWOOD MINING COMPANY	:	
Respondent	:	

ORDER

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 February 18, 1994, Chief Administrative Law Judge Paul Merlin issued an Order of Default to Oakwood Mining Company ("Oakwood") for failing to answer the proposal for assessment of civil penalty filed by the Secretary of Labor and the judge's September 27, 1993, Order to Show Cause. The judge assessed the civil penalty of \$2,200 proposed by the Secretary. For the reasons that follow, we vacate the default order and remand for further proceedings.

On March 7, 1994, the Commission received a Motion for Reconsideration, attached to a letter addressed to Judge Merlin, from Oakwood's counsel. Counsel stated that, when Oakwood received the order to show cause, it was proceeding without counsel and did not understand the necessity for filing an answer because it had previously requested a hearing by returning the "blue card."

The judge's jurisdiction over this case terminated when his decision was issued on February 18, 1994. Commission Procedural Rule 69(b), 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 within 30 days of the decision's issuance. 30 U.S.C.

823(d)(2); 29 C.F.R. 2700.70(a). We deem Oakwood's Motion for Reconsideration to be a timely filed Petition for Discretionary Review, which we grant. See, e.g., Middle States Resources, Inc., 10 FMSHRC 1130 (September 1988).

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On the basis of present record, we are unable to evaluate the merits of Oakwood'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.(Footnote 1)

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

¹Pursuant 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.