

CCASE:  
SOL (MSHA) V. AMI CONSTRUCTION  
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TTEXT:

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	CIVIL PENALTY PROCEEDING
Petitioner,	:	
	:	Docket No. WEST 93-604-M
	:	
v.	:	
	:	
	:	
AMI CONSTRUCTION,	:	
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 March 3, 1994, Chief Administrative Law Judge Paul Merlin issued an Order of Default to AMI Construction ("AMI") for failing to answer the proposal for assessment of civil penalty filed by the Secretary of Labor and the judge's January 4, 1994, Order to Show Cause. The judge assessed the civil penalty of \$1700 proposed by the Secretary. For the reasons that follow, we vacate the default order and remand for further proceedings.

On March 8, 1994, the Commission received a letter from AMI, addressed to Judge Merlin, stating that AMI objected to the proposed fine as excessive. AMI attached a letter, addressed to the Department of Labor's San Francisco regional office, in which AMI had stated more fully its objections. AMI further stated that it had heard nothing in over four months, until receiving the default order at its new address.

The judge's jurisdiction in this matter terminated when his decision was issued on March 3, 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 its issuance. 30 U.S.C. 823(d)(2); 29 C.F.R. 2700.70(a). We deem AMI's 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).

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On the basis of the present record, we are unable to evaluate the merits of AMI'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.

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Arlene Holen, Chairman

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Richard V. Backley, Commissioner

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Joyce A. Doyle, Commissioner