

CCASE:  
SOL (MSHA) V. BROKEN HILL MINING  
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TTEXT:

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket Nos.KENT 93-410
	:	KENT 93-550
BROKEN HILL MINING CO., INC.	:	KENT 93-633
	:	KENT 93-634

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 17, 1994, Administrative Law Judge Avram Weisberger issued a Default Decision to Broken Hill Mining Company, Inc. ("Broken Hill") for failing to answer the judge's November 19, 1993 Order to Show Cause. The judge assessed the civil penalty of \$1829 proposed by the Secretary. For thereasons that follow, we vacate the default order and remand for further proceedings.

On March 31, 1994, the Commission received a letter from Broken Hill's President, Hobart W. Anderson, stating that the company, which is not represented by counsel, responded to the Show Cause order on January 24, 1994, by filing its Answer. Mr. Anderson stated that in so doing they believed they were complying with the judge's order.

The judge's jurisdiction in this matter terminated when his decision was issued on March 17, 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 Broken Hill's letter to be a timely filed Petition for Discretionary Review, which we grant. See, e.g., Middle States Resources, Inc., FMSHRC 1130 (September 1988).

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On the basis of the present record, we are unable to evaluate the merits of Broken Hill'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