

CCASE:
SOL (MSHA) V. J.A.L COAL
DDATE:
19940422
TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. WEVA 93-312
	:	
J.A.L. COAL COMPANY, INC.	:	

BEFORE: Holen, Chairman; Backley and Doyle, Commissioners

ORDER

BY THE COMMISSION:

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1988). On March 28, 1994, Chief Administrative Law Judge Paul Merlin issued an Order of Default to J.A.L. Coal Company, Inc. ("J.A.L."), for its failure to answer the Secretary of Labor's proposal for assessment of civil penalty and the judge's August 19, 1993, Order to Show Cause. The judge ordered the payment of a civil penalty of \$3,900. For the reasons that follow, we vacate the default order and remand this matter for further proceedings.(Footnote 1)

In a letter to the Secretary of Labor's Mine Safety and Health Administration ("MSHA") dated March 31, 1994, which was forwarded to the Commission and received on April 7, 1994, John A. Laurita, President of J.A.L., in effect, requests that the order of default be vacated because J.A.L. understood that a hearing would be held.

The judge's jurisdiction over this case terminated when his decision was issued on March 28, 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 J.A.L.'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).

1 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.

~711

On the basis of the present record, we are unable to evaluate the merits of J.A.L.'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).

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner