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SOL (MSHA) V. MISSION VALLEY CONCRETE
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SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH : Docket Nos. WEST 92-702-M
ADMINISTRATION (MSHA) : WEST 92-703-M
 : WEST 92-704-M
v. :
 :
MISSION VALLEY CONCRETE :
 :
BEFORE: Jordan, Chairman; Backley, Doyle, and Holen, 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)("Mine Act"). On August 24, 1993, Administrative Law Judge August F. Cetti issued a Prehearing Order to Mission Valley Concrete ("MVC"). MVC did not respond to the Prehearing order. On February 4, 1994, the judge issued an Order to Show Cause directing MVC to respond to the Prehearing Order. MVC failed to respond to that Order. On March 21, 1994, the judge issued an Order of Default to MVC and assessed a civil penalty of \$1,949. For the reasons that follow, we vacate the default order and remand for further proceedings.

On March 28, 1994, the Commission received a letter, filed by facsimile transmission, from MVC. The letter, signed by MVC President W. Greg Harding, asked that the case be reconsidered. MVC asserted that it had two settlement discussions with an attorney representing the Secretary of Labor and that, notwithstanding a commitment to respond to its settlement offer, the Secretary's attorney had not done so.

The judge's jurisdiction in this matter terminated when his decision was issued on March 21, 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 MVC'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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We note that MVC has not asserted that it did not receive the judge's Prehearing Order or his Order to Show Cause. On the basis of the present record, we are unable to evaluate the merits, if any, of MVC's position. Accordingly, we remand this matter to the judge, who shall determine whether default is warranted. See Hickory Coal Co., 12 FMSHRC 1201, 1202 (June 1990).

Mary Lu Jordan, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

Arlene Holen, Commissioner

Distribution:

Susan J. Eckert, Esq.
Office of the Solicitor
U.S. Department of Labor
1999 Broadway, Suite 1600
Denver, Colorado 80202-5716

W. Greg Harding, President
Mission Valley Concrete
P.O. Box 395
Pablo, MT 59855

Administrative Law Judge August F. Cetti
Federal Mine Safety and Health Review Commission
1244 Speer Boulevard #280
Denver, Colorado 80204-3582