

CCASE:  
SOL (MSHA) V. NORTH AMERICAN SLATE  
DDATE:  
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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)	:		
	:	Docket No .	YORK 93-156-M
vs.	:		
	:		
NORTH AMERICAN SLATE, INC.	:		

O R D E R

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 April 25, 1994, Chief Administrative Law Judge Paul Merlin issued an Order of Default to North American Slate, Inc. ("North American") for failing to answer the proposal for assessment of civil penalty filed by the Secretary of Labor ("Secretary") and the judge's January 27, 1994 Order to Show Cause. The judge assessed the civil penalty of \$50 proposed by the Secretary.

The judge's jurisdiction in this matter terminated when his decision was issued on April 25, 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). On May 25, 1994, North American filed a timely petition for discretionary review. North American avers that the default was improperly entered after it "had attempted to respond to the citation . . . by mailing a notice of contest to [the] Secretary in accord with the Notice of Assessment." Pet. at 1.

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We grant the petition. On the basis of the present record, we are unable to evaluate the merits of North American's position. Accordingly, we reopen this matter, vacate the judge's default order, and remand this matter to the judge, who shall determine whether default is warranted. See Hickory Coal Co., 12 FMSHRC 1201, 1202 (June 1990).

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Mary Lu Jordan, Chairman

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Richard V. Backley, Commissioner

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Joyce A. Doyle, Commissioner

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Arlene Holen, Commissioner