

CCASE:  
SOL (MSHA) V. BOYER READY MIX  
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TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET, N.W., SIXTH FLOOR  
WASHINGTON, D.C. 20006

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No.CENT 93-39-M
	:	
BOYER READY MIX SAND & ROCK, INC.	:	
	:	

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 June 28, 1994, Administrative Law Judge August F. Cetti issued a Default Decision to Boyer Ready Mix Sand & Rock, Inc. ("Boyer") for failing to answer the July 27, 1993, Prehearing Order or the judge's April 8, 1994, Order to Show Cause. The judge assessed the civil penalty of \$6168 proposed by the Secretary of Labor ("Secretary").

On July 25, 1994, the Commission received a letter from Boyer's President, Bill Boyer, stating that he had engaged in settlement discussions with two attorneys representing the Secretary and had agreed to settle the cases. Mr. Boyer apparently believes that substitution of counsel by the Secretary delayed the filing of a settlement motion with the judge, who had issued his decision by the time the motion was filed.

The judge's jurisdiction in this matter terminated when his decision was issued on June 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 Boyer'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 Boyer'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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Mary Lu Jordan, Chairman

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Joyce A. Doyle, Commissioner

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Arlene Holen, Commissioner