

CCASE:
SOL (MSHA) V. PORT COSTA
DDATE:
19940901
TTEXT:

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. WEST 93-353-M
	:	
PORT COSTA MATERIALS, INC.	:	
	:	
	:	

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 July 28, 1994, Administrative Law Judge John J. Morris issued a decision, in which he disposed of 73 citations issued against Port Costa Materials, Inc.

The Solicitor's Office of the Secretary of Labor, in a letter to the judge dated August 12, 1994, pointed out a discrepancy in the decision with regard to Citation No. 3636555. The letter stated that, on pages 45 and 46 of the judge's decision the citation was discussed and "affirmed," but that on page 66 of the decision, where the judge summarized the disposition of the citations in the proceeding, the citation was listed as "vacated." The letter requested that the "discrepancy ... be addressed/corrected." By letter dated August 15, 1994, the judge responded to the request by stating that he was limited by the Commission's Rules to correction of clerical errors and did not view the correction required as a "clerical error" within the meaning of the rules.

The judge's jurisdiction in this matter terminated when his Decision was issued on July 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 the Solicitor's August 12 letter to be a timely filed Petition for Discretionary Review, which we grant.

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See, e.g., Middle States Resources, Inc., 10 FMSHRC 1130
(September 1988).

In light of the apparent error in the judge's decision
and the requested relief, we remand this proceeding to the
judge for further appropriate proceedings.

Mary Lu Jordan, Chairman

Joyce A. Doyle, Commissioner

Arlene Holen, Commissioner