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SOL (MSHA) V. SANDY JONES
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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. CENT 94-104-M
:
SANDY JONES CONSTRUCTION :
:

BEFORE: Jordan, Chairman; Doyle, Holen and Marks, 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 October 27, 1994, Chief Administrative Law Judge Paul Merlin issued an Order of Default to Sandy Jones Construction ("SJC") for failing to answer the proposal for assessment of penalty filed by the Secretary of Labor on March 25, 1994, or the judge's Order to Show Cause of July 22, 1994. The judge assessed the civil penalty of \$4,000 proposed by the Secretary.

On November 7, 1994, the Commission received a letter from Ray Jones, SJC's owner, in which Jones states that he had timely mailed SJC's answer, dated April 25, 1994, to the Department of Labor's Regional Solicitor's Office in Dallas, Texas. He further states that, after receiving the show cause order, he immediately called and explained that he had sent SJC's answer. FOOTNOTE 1 Jones also claims that on August 8, he sent a copy of the answer to the "Mine Safety and Health Administration Commission" and, on subsequent occasions, approached the solicitor's office in Dallas in an effort to obtain a copy of SJC's file and to negotiate a settlement. The record does not contain a copy of SJC's answer.

The judge's jurisdiction in this matter terminated when his decision was issued on October 27, 1994. 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

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1/ Jones does not specify which agency he called.

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discretionary review within 30 days of its issuance. 30 U.S.C. 823(d)(2); 29 C.F.R. 2700.70(a). We deem SJC's motion to be a timely filed petition for discretionary review, which we grant. See, e.g., Middle States Resources, Inc., 10 FMSHRC 1130 (September 1988).

On the basis of the present record, we are unable to evaluate the merits of SJC'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.

Mary Lu Jordan, Chairman

Joyce A. Doyle, Commissioner

Arlene Holen, Commissioner

Marc Lincoln Marks, Commissioner