

CCASE:  
SOL (MSHA) V. MESHACH COAL  
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19941205  
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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. KENT 94-436  
 :  
MESHACH COAL COMPANY, INC. :  
 :

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 Meshach Coal Company, Inc. ("Meshach") for failing to answer the proposal for assessment of penalty filed by the Secretary of Labor on March 22, 1994, or the judge's June 30, 1994, Order to Show Cause. The judge assessed the civil penalty of \$2,000 proposed by the Secretary.

On November 7, 1994, the Commission received a letter dated October 29, 1994, from Vernon Morris, president of Meshach. Morris states that he settled this case for \$500 with Jason Huff, an attorney in the office of Department of Labor's Regional Solicitor in Barbourville, Kentucky. Morris states that he has paid that amount in full and he has attached to his letter a copy of the settlement agreement and his correspondence with Mr. Huff. FOOTNOTE 1

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/ Morris also attached a copy of a default order entered against Meshach by Judge Merlin on October 27, 1994, in a separate case, Docket No. KENT 94-337.

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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 Meshach'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 Meshach'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