

CCASE:
SOL (MSHA) HARLAN CUMBERLAND
DDATE:
19941205
TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. KENT 94-408
	:	
v.	:	
	:	
HARLAN CUMBERLAND	:	
COAL COMPANY	:	
	:	

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 Harlan Cumberland Coal Company ("Harlan") for failing to answer the proposal for assessment of penalty filed by the Secretary of Labor on March 7, 1994, or the judge's July 1, 1994, Order to Show Cause. The judge assessed the civil penalties of \$534 proposed by the Secretary.

On November 9, 1994, the Commission received from Harlan a Motion to Vacate Order of Default. Harlan's counsel explains that, on July 12, after receiving the show cause order, Harlan mailed its answer to the Commission and that the Secretary's counsel has confirmed receipt of the answer on July 13. Harlan attached to its motion a copy of its Response to Order to Show Cause and Answer, which contains a certificate of service stating that the motion was mailed to the Secretary's counsel on July 12. The record does not otherwise show receipt by the Commission of Harlan's July 12 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 discretionary review within 30 days of its issuance. 30 U.S.C. 823(d)(2); 29 C.F.R. 2700.70(a). We deem Harlan'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).

~2382

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