

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N

WASHINGTON, D.C. 20004-1710

January 28, 2014

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. CENT 2011-372-M
v.	:	A.C. No. 39-01328-243566
	:	
BOB BAK CONSTRUCTION	:	

BEFORE: Jordan, Chairman; Young, Cohen, Nakamura, and Althen, Commissioners

ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”). On January 10, 2014, the Commission received from Bob Bak Construction (“Bob Bak”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the default order entered against it.

On December 14, 2011, the Chief Administrative Law Judge issued an Order to Show Cause which by its terms became a Default Order if the operator did not file an answer within 30 days. This Order to Show Cause was issued in response to Bob Bak’s perceived failure to answer the Secretary’s March 11, 2011 Petition for Assessment of Civil Penalty.

Bob Bak asserts that it answered the penalty petition and encloses a copy mailed to MSHA and the Commission on April 19, 2011. Bob Bak further states that it was unrepresented by counsel at the time it received the Show Cause Order and thought no further action was necessary after responding to the penalty petition. The Secretary of Labor does not oppose the request to reopen, and notes that the documentary record indicates that an answer to the penalty petition was properly filed and served on the Secretary.

Having reviewed Bob Bak's request and the Secretary's response, we conclude that the Show Cause Order did not effectively become a Default Order because the operator had filed a response to the penalty petition. Accordingly, because this case was assigned to Administrative Law Judge William B. Moran, we are remanding it to him for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.

/s/ Mary Lu Jordan
Mary Lu Jordan, Chairman

/s/Michael G. Young
Michael G. Young, Commissioner

/s/ Robert F. Cohen, Jr.
Robert F. Cohen, Jr., Commissioner

/s/ Patrick K. Nakamura
Patrick K. Nakamura, Commissioner

/s/ William I. Althen
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