

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N

WASHINGTON, D.C. 20004-1710

November 5, 2013

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|------------------------|---|----------------------------|
| SECRETARY OF LABOR, | : | |
| MINE SAFETY AND HEALTH | : | |
| ADMINISTRATION (MSHA) | : | |
| | : | Docket No. CENT 2012-128-M |
| v. | : | A.C. No. 23-02347-262760 |
| | : | |
| PIERCE SAND | : | |

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. (2006) (“Mine Act”). On March 21, 2013, the Commission received from Pierce Sand a motion seeking to reopen a penalty assessment proceeding and relieve it from the default order entered against it.

On August 1, 2012, 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 Pierce Sand’s failure to answer the Secretary of Labor’s November 18, 2011 Petition for Assessment of Civil Penalty.

Pierce Sand asserts that it timely answered the Show Cause Order and submits a copy of the answer date-stamped by the Commission as received on August 27, 2012. Pierce Sand states that the answer was mistakenly only applied to a companion case, Docket No. CENT 2012-129-M. The Secretary does not oppose the request to reopen, and agrees with the operator’s contentions.

Having reviewed Pierce Sand's request and the Secretary's response, we conclude that the Default Order did not effectively become a final order of the Commission because the operator filed a timely response to the Show Cause Order. Accordingly, this case is remanded to the Chief Administrative Law Judge 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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