

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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MAR 28 2017

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),

v.

LEHIGH SOUTHWEST CEMENT
COMPANY

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Docket No. WEST 2015-690-M
A.C. No. 04-00034-380538

BEFORE: Althen, Acting Chairman; Jordan, Young, and Cohen, 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 November 6, 2015, the Commission received from Lehigh Southwest Cement Company (“Lehigh”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On September 3, 2015, the Chief Administrative Law Judge issued an Order to Show Cause in response to Lehigh’s failure to answer the Secretary of Labor’s July 21, 2015 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on October 5, 2015, when the operator failed to file an answer within 30 days.

MSHA records show that after Lehigh filed a timely contest to a proposed assessment containing the citation herein and other citations, the proposed assessment was split into several dockets. The operator filed an answer to the Order to Show Cause in the other docket (WEST 2015-689-M) but did not file an answer in this docket. Lehigh states that it failed to timely answer the Order to Show Cause here because in answering the Order to Show Cause in the other docket, it overlooked the fact that the proposed assessment had been split up. The Secretary does not oppose the request to reopen. However, he urges Lehigh to timely file an answer to all penalty petitions and to take Orders to Show Cause seriously.

The Judge’s jurisdiction in this matter terminated when the default occurred. 29 C.F.R. § 2700.69(b). 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)(A)(i); 29 C.F.R. § 2700.70(a). If the Commission does not direct review within 40 days of a decision’s issuance, it becomes a final decision of the

Commission. 30 U.S.C. § 823(d)(1). Consequently, the Judge's order here has become a final decision of the Commission.

Having reviewed Lehigh's request and the Secretary's response, in the interest of justice, we hereby reopen the proceeding and vacate the Default 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.



William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

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