

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET N.W., 6TH FLOOR
WASHINGTON, D.C. 20006

June 29, 1995

SECRETARY OF LABOR,	:	Docket No. KENT 94-92
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket Nos. KENT 94-271
	:	KENT 94-272
v.	:	KENT 94-362
	:	KENT 94-363
NORTH STAR CONTRACTORS, INC.	:	KENT 94-426
	:	

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). On January 17, 1995, the Secretary of Labor filed a Motion for Default Judgment, asserting that North Star Contractors, Inc. ("North Star") had agreed to pay certain penalties proposed by the Secretary in six cases but had subsequently failed to sign the Joint Motions to Approve Settlement mailed to North Star on April 15, 1994, and on October 20, 1994. On February 1, 1995, Chief Administrative Law Judge Paul Merlin issued two orders to show cause, directing North Star to answer with either a signed copy of the settlement motion or with an explanation for its failure to do so.¹ On March 21, 1995, after no response had been filed, Judge Merlin issued two default orders, corresponding to the show cause orders, entering judgment in favor of the Secretary and ordering North Star to pay the proposed penalties.

On March 30, 1995, the Commission received from Pamela Taylor, North Star's secretary, two letters dated March 27. In the first letter, regarding the default order that had been entered in Docket No. KENT 94-92, Taylor requests a copy of the proposed settlement, explaining that she recently had assumed responsibility for the operator's penalty cases and that she did not have all of the information necessary to discuss the cases.

¹ The judge issued a show cause order in Docket No. KENT 94-92, and a separate show cause order pertaining to the other five subject cases.

In the second letter, regarding the default order that had been entered in the other five cases, Taylor states that, on March 8, 1995, she had sent a letter to an attorney with the Department of Labor's Regional Solicitor's Office and had attached a list of various penalty assessments, including five of the subject actions. She states that she requested a reduction of penalties and the formulation of a payment plan but received no response. Taylor requests that the Commission consider all the cases listed in the attachment to her March 8 letter, which includes 14 cases in addition to the subject cases.


The judge's jurisdiction over this case terminated when the captioned default orders were issued on March 21, 1995. 29 C.F.R. § 2700.69(b). 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). Due to clerical error, the Commission did not act on the March 27 letters within the statutory period for considering requests for discretionary review. The judge's default orders became final orders of the Commission 40 days after their issuance by operation of section 113(d)(1) of the Mine Act, 30 U.S.C. § 823(d)(1).

Relief from a final Commission judgment or order is available to a party under Fed. R. Civ. P. 60(b)(1) in circumstances such as mistake, inadvertence, or excusable neglect. 29 C.F.R. § 2700.1(b) (Federal Rules of Civil Procedure apply "so far as practicable" in the absence of applicable Commission rules); *e.g.*, *Lloyd Logging, Inc.*, 13 FMSHRC 781, 782 (May 1991). In the interest of justice, we reopen these proceedings and deem North Star's March 27 letters to constitute petitions for discretionary review, which we grant. *Mitchell, emp. by HB&B Equip. Co.*, 15 FMSHRC 2458, 2459 (December 1993); *Remp Sand & Gravel*, 16 FMSHRC 501, 502 (March 1994).

North Star has offered no explanation in its March 27 letters for its failure to answer the judge's show cause orders. We conclude that relief from the judge's orders is not warranted and we deny North Star's request as to the subject six cases. *Cf. Pit*, 16 FMSHRC 2033, 2034 (October 1994) (denying request for relief).

We also deny North Star's request that we consider the other 14 cases referenced in its March 8 letter to the Solicitor. The request is inappropriate for a majority of those cases because, by the date of North Star's March 27 letters, they had been settled or dismissed, or were not reviewable because an administrative law judge had not issued an order constituting his final disposition of the matter. In the remaining cases, in which default orders had been entered and had become final orders of the Commission, North Star has offered no justification for relief under Rule 60(b).

Accordingly, we deny North Star's request for relief.



Mary Lu Jordan, Chairman



Joyce A. Doyle, Commissioner



Arlene Holen, Commissioner



Marc Lincoln Marks, Commissioner

Distribution

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