

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

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WASHINGTON, DC 20001

January 11, 2011

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

v.

ENOS MILLER

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Docket No. WEST 2008-1569-M
A.C. No. 24-02519-159643

BEFORE: Jordan, Chairman; Duffy, Young, Cohen, and Nakamura, 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 December 27, 2010, the Commission received from Enos Miller a letter seeking to set aside an order of Chief Administrative Law Judge Robert J. Lesnick entering default judgment for the Secretary of Labor in this case. On January 10, 2011, the Commission received a response from the Secretary stating that she does not oppose Mr. Miller’s request.

The Chief Judge’s jurisdiction in this matter terminated when his default order was issued on December 2, 2010. 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 review within 30 days of its issuance. 30 U.S.C. § 823(d)(2); 29 C.F.R. § 2700.70(a). We construe the letter from Mr. Miller to be a timely filed petition for discretionary review.

On December 14, 2009, Chief Judge Lesnick issued a show cause order to Mr. Miller stating that he had failed to file an answer to a petition for penalty assessment sent to him by the Secretary of Labor on November 3, 2008 and that Mr. Miller would be found in default if he did not file an answer or show good cause for not doing so within 30 days of the order. On March 3, 2010, the Secretary filed a motion to dismiss the instant proceeding due to Mr. Miller’s failure to file an answer or respond to the judge’s show cause order. On December 2, 2010, Chief Judge

Lesnick issued an order finding that Mr. Miller had failed to respond to the show cause order and entering a judgment by default for the Secretary.

In support of his petition, Mr. Miller states “it is increasingly difficult to have any time for anything but a losing battle to stay financially solvent.” Mr. Miller also asserts that he has laid off all employees that he can operate without thereby increasing the burden on him as the owner.

Because the petition filed by Mr. Miller does not explain why he failed to file an answer or to respond to the Chief Judge’s show cause order and does not provide any reasons why the default order should be vacated, we hereby deny the petition.

Mary Lu Jordan, Chairman

Michael F. Duffy, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

Patrick K. Nakamura, Commissioner

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