

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW
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June 30, 2010

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

v.

BRODY MINING, LLC

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Docket No. WEVA 2009-1445
A.C. No. 46-09086-184529

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 May 12, 2010, the Commission received a petition for discretionary review from Brody Mining, LLC (“Brody”) challenging an order issued by Chief Administrative Law Judge Robert J. Lesnick on April 9, 2010. In his order, Judge Lesnick denied a motion to dismiss filed by Brody and accepted an untimely petition for assessment of penalty filed by the Secretary of Labor.

Under the Mine Act and the Commission’s procedural rules, relief from a Judge’s final 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. §§ 2700.69(a), 2700.70(a). Under the Commission’s Procedural Rules, the filing of a petition for discretionary review is effective upon receipt. 29 C.F.R. §§ 2700.5(e)(2), 2700.70(a).

Brody’s petition was received by the Commission on May 12, 2010, more than 30 days after issuance of the Judge’s April 9, 2010 order. Accordingly, the petition should be dismissed as untimely filed. *Duval Corp. v. Donovan*, 650 F.2d 1051, 1054 (9th Cir. 1981); *Sunbeam Coal Corp.*, 2 FMSHRC 775 n.1 (Apr. 1980).

For the foregoing reasons, Brody's petition for discretionary review is dismissed as untimely.¹

Mary Lu Jordan, Chairman

Michael F. Duffy, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

Patrick K. Nakamura, Commissioner

¹ We note that even if Brody had timely filed the petition, an independent grounds for denial exists since the petition seeks review of a Judge's order that is interlocutory, rather than final, in nature. *See* 29 C.F.R. § 2700.76.

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