

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW

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WASHINGTON, DC 20001

January 6, 2011

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
	:	
v.	:	Docket No. WEST 2009-434-M
	:	A.C. No. 42-02426-172386 WJ6
DYNATEC MINING CORPORATION	:	

BEFORE: Jordan, Chairman; Duffy, Young, Cohen, and Nakamura, Commissioners

DIRECTION FOR REVIEW AND 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 23, 2008, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued Proposed Assessment No. 000172386 to Dynatec Mining Corp. (“Dynatec”). On March 9, 2009, after Dynatec had timely contested the proposed penalty, the Secretary of Labor (“Secretary”) filed a petition for assessment of civil penalty with the Commission regarding the contested penalty. On August 17, 2010, Chief Administrative Law Judge Robert Lesnick issued an Order to Show Cause to Dynatec for failure to file an answer to the Secretary’s petition. On December 2, 2010, the judge issued an Order of Default entering judgement for the Secretary and directing Dynatec to pay the proposed civil penalty immediately. On December 14, 2010, the Commission received a petition for discretionary review from Dynatec, requesting that the Commission issue an order directing review and vacating the default order.

In support of its petition, Dynatec states that on April 10, 2009, it timely filed its answer to the petition. Dynatec further states that it filed an answer to the show cause order on September 22, 2010, explaining that it had previously filed an answer to the Secretary’s petition. On December 15, 2010, the Commission received a letter from the Secretary stating that she does not oppose Dynatec’s petition for discretionary review. The Secretary did not dispute any of Dynatec’s assertions.

The Chief Judge's jurisdiction over this case terminated when he issued his default order on December 2, 2010. 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). We conclude that Dynatec's petition for discretionary review was timely filed, and we hereby grant it.

Upon review of the record, in the interest of justice, we hereby vacate the Order of Default and remand this matter to the Chief Judge for further appropriate proceedings. *See REB Enterprises, Inc.*, 18 FMSHRC 311 (Mar. 1996).

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Mary Lu Jordan, Chairman

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Michael F. Duffy, Commissioner

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Michael G. Young, Commissioner

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Robert F. Cohen, Jr., Commissioner

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Patrick K. Nakamura, Commissioner

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