

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

March 23, 1995

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. WEVA 94-401
	:	
BSC CONSTRUCTION, INC.	:	
	:	

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) ("Mine Act"). On February 21, 1995, Chief Administrative Law Judge Paul Merlin issued an Order of Default to BSC Construction, Inc. ("BSC") for failing to answer the proposal for assessment of penalty filed by the Secretary of Labor on October 11, 1994, or the judge's Order to Respondent to Show Cause of December 21, 1994. The judge assessed the civil penalties of \$800 proposed by the Secretary.

On March 2, 1995, the Commission received a letter from Roger Glover, BSC's operations manager, in which Glover states that BSC had mailed a "letter of appeal" on August 25, 1994, to Caryl Casden, an attorney with the Department of Labor's Regional Solicitor's Office in Arlington, Virginia. Glover states that, after he was informed that his letter had not been received and, after receiving the show cause order, he mailed another appeal letter to Casden by certified mail. He enclosed a copy of that letter, dated January 5, 1995, and a certified mail receipt dated January 9, 1995.

The judge's jurisdiction in this matter terminated when his decision was issued on February 21, 1995. 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); 29 C.F.R. ' 2700.70(a). We deem BSC's March 2 letter to be a timely filed petition for discretionary review, which we grant. See, e.g., *Middle States Resources, Inc.*, 10 FMSHRC 1130 (September

1988).

On the basis of the present record, we are unable to evaluate the merits of BSC's position. In the interest of justice, we remand this matter to the judge, who shall determine whether default is warranted. *See Hickory Coal Co.*, 12 FMSHRC 1201, 1202 (June 1990).

For the reasons set forth above, we vacate the judge's default order and remand this matter for further proceedings.

Mary Lu Jordan, Chairman

Joyce A. Doyle, Commissioner

Arlene Holen, Commissioner

Marc Lincoln Marks, Commissioner