

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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March 29, 2004

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. CENT 2002-280-M
	:	A.C. No. 03-01614-05552
	:	
v.	:	
	:	
MERIDIAN AGGREGATES COMPANY	:	

BEFORE: Duffy, Chairman; Beatty, Jordan, Suboleski, and Young, 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. (1994) (“Mine Act”). On December 19, 2002, former Chief Administrative Law Judge David Barbour issued to Meridian Aggregates Company (“Meridian”) an Order to Show Cause for failure to answer the Secretary of Labor’s petition for assessment of penalty. On February 5, 2003, Chief Judge Barbour issued an Order of Default dismissing this civil penalty proceeding for failure to respond to his show cause order.

On October 23, 2003, the Commission received from a representative of Meridian a motion to reopen the case setting forth a chronology of events in order to explain its failure to answer the Secretary’s petition for assessment of penalty and to respond to the judge’s show cause order. Mot. at 1. Meridian claims that it sent a response to the citations and proposed penalties on October 2, 2002. *Id.* It further asserts that it received a certified return receipt notice showing that the response had been delivered and received by the Secretary on January 8, 2003. *Id.* Meridian attached copies of its response and the return receipt. *Id.*, attach. The Secretary states that she does not oppose Meridian’s request for relief.

The judge’s jurisdiction in this matter terminated when his decision was issued on February 5, 2003. 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). If the Commission does not direct review within 40 days of a decision's issuance, it becomes a final decision of the Commission. 30 U.S.C. § 823(d)(1). The Commission has not directed review of the judge's order here, which became a final decision of the Commission on March 17, 2003.

In evaluating requests to reopen final orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure under which, for example, a party could be entitled to relief from a final order of the Commission on the basis of inadvertence or mistake. *See* 29 C.F.R. § 2700.1(b) ("the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure"); *Highlands Mining & Processing Co.*, 24 FMSHRC 685, 686 (July 2002). We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Having reviewed Meridian's request, in the interests of justice, we hereby remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists to excuse Meridian's failure to respond to the show cause order and for further proceedings as appropriate.

Michael F. Duffy, Chairman

Robert H. Beatty, Jr., Commissioner

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

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