

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW  
SUITE 9500  
WASHINGTON, DC 20001

March 25, 2004

SECRETARY OF LABOR, :  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA) : Docket No. CENT 2003-35-M  
 : A.C. No. 41-04027-05504  
v. :  
 :  
LAREDO PAVING, INC. :

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 January 10, 2003, former Chief Administrative Law Judge David Barbour issued to Laredo Paving, Inc. (“Laredo Paving”) an Order to Show Cause for failure to answer the Secretary of Labor’s petition for assessment of penalty. On March 6, 2003, Chief Judge Barbour issued an Order of Default dismissing this civil penalty proceeding for failure to respond to his show cause order. On April 4, 2003, the Commission received from Laredo Paving a petition for discretionary review requesting that the Commission vacate the judge’s dismissal order and reopen the proceeding. The Secretary of Labor does not oppose the petition filed by Laredo Paving.

In its petition, Laredo Paving asserts that, after it received the Secretary’s petition for assessment of penalty, it forwarded a letter to the judge denying the violations and requesting a hearing. Pet. at 1. It further explains that it did not subsequently respond to the judge’s show cause order because it was involved in settlement negotiations with the Secretary and did not understand that a response was necessary. *Id.* Laredo Paving submits that after it received a fully executed Stipulation and Motion to Approve Settlement, it received the Order of Default. *Id.* at 1-2. It states that it subsequently received a letter from Judge Barbour explaining that he had not received the Stipulation and Motion to Approve Settlement at the time that he issued the Order of Default. *Id.* at 2.

The judge's jurisdiction in this matter terminated when his decision was issued on March 6, 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). The petition was timely filed.

On April 15, 2003, the Commission issued a direction for review, granting Laredo Paving's petition. We hereby remand this matter to the Chief Judge to determine whether good cause exists to excuse its 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

Distribution

Bob Price, President  
Laredo Paving, Inc.  
P.O. Box 1029  
Big Spring, TX 79721

Thao A. Pham, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
525 South Griffin St., Suite 501  
Dallas, TX 75202

W. Christian Schumann, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
1100 Wilson Blvd., 22<sup>nd</sup> Floor West  
Arlington, VA 22209-2247

Chief Administrative Law Judge Robert J. Lesnick  
Federal Mine Safety & Health Review Commission  
601 New Jersey Avenue, N.W., Suite 9500  
Washington, D.C. 20001-2021