

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

April 17, 1996

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. WEST 95-512-M
	:	
DE ATLEY COMPANY, INC.	:	

BEFORE: Jordan, Chairman; Doyle, Holen, Marks and Riley, 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). On February 7, 1996, Chief Administrative Law Judge Paul Merlin issued an Order of Default to DeAtley Company, Inc. (“DeAtley”) for its failure to answer the Secretary of Labor’s petition for assessment of civil penalty or the judge’s December 15, 1995, Order to Respondent to Show Cause. The judge assessed a civil penalty of \$1,019.

In a letter to the judge dated March 16, 1996, DeAtley’s office engineer, Max Jensen, states that his predecessor contested the penalty and subsequently settled the case with the Secretary. He explains that, shortly after receiving the settlement papers his predecessor resigned without having the agreement signed. Jensen asserts that, when he discovered the unconsummated settlement agreement, he immediately had it signed and mailed to the Secretary along with payment in full of the stipulated amount. Jensen states that, on February 26, 1996, DeAtley received a letter from the Secretary acknowledging receipt of the settlement payment but demanding the balance (\$512) of the original penalty. Jensen states he telephoned Matthew Vadnal, the Secretary’s counsel, to explain why the settlement agreement was returned late and Vadnal suggested he contact the Commission.

On April 1, 1996, the Commission received the Secretary’s response to DeAtley’s March 16 letter. The Secretary requests the letter be treated as a request for relief from final judgment.

The judge’s jurisdiction over this case terminated when his default order was issued on February 7, 1996. 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). 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). DeAtley's letter was received by the Commission on March 21, after the judge's default order had become a final decision of the Commission.

Relief from a final Commission judgment or order is available to a party under Fed. R. Civ. P. 60(b)(1) in circumstances such as mistake, inadvertence, or excusable neglect. 29 C.F.R. § 2700.1(b) (Federal Rules of Civil Procedure apply "so far as practicable" in the absence of applicable Commission rules); *e.g.*, *Lloyd Logging, Inc.*, 13 FMSHRC 781, 782 (May 1991). On the basis of the present record, we are unable to evaluate the merits of DeAtley's position. In the interest of justice, we reopen the proceeding, treat DeAtley's letter as a late-filed petition for discretionary review requesting relief from a final Commission decision, and excuse its late filing. *See, e.g.*, *Kelley Trucking Co.*, 8 FMSHRC 1867, 1868-69 (December 1986). We remand the matter to the judge, who shall determine whether final relief from default is warranted. *See Hickory Coal Co.*, 12 FMSHRC 1201, 1202 (June 1990).

Mary Lu Jordan, Chairman

Joyce A. Doyle, Commissioner

Arlene Holen, Commissioner

Marc Lincoln Marks, Commissioner

James C. Riley, Commissioner