

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET N.W., 6TH FLOOR

WASHINGTON, D.C. 20006

December 26, 1995

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. YORK 95-102-M
	:	
GENERAL ROAD TRUCKING CORP.	:	
	:	

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) (AMine Act@). On November 20, 1995, Chief Administrative Law Judge Paul Merlin issued an Order of Default to General Road Trucking Corp. (AGeneral Road@) for failing to answer the proposal for assessment of penalty filed by the Secretary of Labor on June 26, 1995, or the judge's Order to Respondent to Show Cause issued on September 14, 1995. The judge assessed the civil penalty of \$1,200 proposed by the Secretary.

On December 4, 1995, the Commission received a letter from General Road's secretary asserting that AMr. Anthony . . . does not run this plant,@Adoes not understand why he is considered in violation,@and that A[t]his was his initial statement and the reason he requested a hearing.@

The judge's jurisdiction in this matter terminated when his decision was issued on November 20, 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 General Road's 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 General Road's position. In the interest of justice, we vacate the default order and remand this matter to the judge, who shall determine whether relief from default is warranted. *See Amber Coal Co.*, 11 FMSHRC 131, 132-33 (February 1989).

Mary Lu Jordan, Chairman

Joyce A. Doyle, Commissioner

Arlene Holen, Commissioner

Marc Lincoln Marks, Commissioner