

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

April 24, 1996

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| SECRETARY OF LABOR, | : | |
| MINE SAFETY AND HEALTH | : | |
| ADMINISTRATION (MSHA) | : | |
| | : | |
| v. | : | Docket No. KENT 95-781 |
| | : | |
| GLENN'S TRUCKING 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) ("Mine Act"). On March 18, 1996, Chief Administrative Law Judge Paul Merlin issued an Order of Default to Glenn's Trucking Company, Inc. ("Glenn's Trucking") for failing to answer the petition for assessment of penalty filed by the Secretary of Labor on October 26, 1995, or the judge's Order to Respondent to Show Cause issued on January 25, 1996. The judge assessed the civil penalty of \$2,000 proposed by the Secretary.

On April 1, 1996, the Commission received a letter from Glenn's Trucking asserting that, on February 13, 1996, it had sent the Commission its answer and a copy of a "letter of protest" that it had sent to the Secretary on August 17, 1995. Glenn's Trucking enclosed copies of its answer and letter. It requests that the default order be set aside and the case reassessed.

The judge's jurisdiction in this matter terminated when his decision was issued on March 18, 1996. 29 C.F.R. § 2700.69(b) (1995). 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 Glenn's Trucking'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 Glenn's

Trucking'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

James C. Riley, Commissioner