

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

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WASHINGTON, DC 20001

April 19, 2007

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. KENT 2007-47-M
	:	A.C. No. 15-18157-98778
v.	:	
	:	
ROGERS GROUP, INC.	:	

BEFORE: Duffy, Chairman; Jordan and Young, Commissioners

DIRECTION FOR REVIEW AND 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. (2000) (“Mine Act”). On February 2, 2007, Chief Administrative Law Judge Robert Lesnick issued to Rogers Group, Inc. (“Rogers”) an Order to Show Cause for failure to answer the Secretary of Labor’s petition for assessment of penalty. On April 2, 2007, Chief Judge Lesnick issued an Order of Default dismissing this civil penalty proceeding for failure to respond to the show cause order.

On April 10, 2007, the Commission received from Rogers a letter asserting that it had submitted what it thought was the correct paperwork and had not heard further concerning the case. Rogers also explains that it does not have much experience with Commission proceedings. It states that it now knows what it needs to do to continue its contest and requests that the default be withdrawn. The Secretary has indicated that she does not oppose Rogers’ request.

The judge’s jurisdiction in this matter terminated when his decision was issued on April 2, 2007. 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). We deem Rogers’ correspondence to constitute a timely filed petition for review, which we grant. *See, e.g., Middle States Res., Inc.*, 10 FMSHRC 1130 (Sept. 1988).

On the basis of the present record, we are unable to evaluate the merits of Rogers' position. Having reviewed Rogers' request, in the interest of justice, we remand this matter to the Chief Administrative Law Judge, who shall determine whether relief from default is warranted, and for further proceedings as appropriate.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

Distribution

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