

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

May 2, 2006

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

PAUL F. BECKER COAL CO.

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Docket No. PENN 2006-9
A.C. No. 36-06928-66470

BEFORE: Duffy, Chairman; Jordan, Suboleski, 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 3, 2006, Chief Administrative Law Judge Robert Lesnick issued to Paul F. Becker Coal Company (“Becker”) an Order to Show Cause for failure to answer the Secretary of Labor’s petition for assessment of civil penalty. On March 23, 2006, Chief Judge Lesnick issued an Order of Default entering judgement for the Secretary and directing Becker to pay the proposed civil penalty immediately.

On April 10, 2006, the Commission received a notarized letter from Paula M. Becker, Becker’s representative, which we construe to be a timely petition for discretionary review. In the letter, Becker states that the owner, Paul F. Becker, had been ill for some time and passed away on March 4, 2006. The Secretary has indicated that she does not oppose granting Becker’s petition for review.

The judge’s jurisdiction in this matter terminated when his decision was issued on March 23, 2006. 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 Becker’s correspondence to be a timely filed petition for discretionary review, which we grant. See, e.g., *Middle States Res., Inc.*, 10 FMSHRC 1130 (Sept. 1988).

Upon review of the record, we have determined that the wording of the Order to Show Cause did not conform with the Commission's Procedural Rules. Accordingly, in the interest of justice, we hereby vacate the Order of Default and remand this matter to the Chief Judge for further appropriate proceedings. *See REB Enterprises, Inc.*, 18 FMSHRC 311 (Mar. 1996).

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

Distribution

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