

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

December 21, 1999

SECRETARY OF LABOR	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. PENN 99-73
	:	
ROSTOSKY COAL COMPANY	:	
	:	

BEFORE: Jordan, Chairman; Marks, Riley, Verheggen, and Beatty, 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 October 5, 1999, the Commission’s Office of Administrative Law Judges received a petition for discretionary review from Joseph Rostosky challenging a decision issued by Administrative Law Judge Jacqueline Bulluck against Rostosky Coal Company (“Rostosky”) on September 3, 1999. 21 FMSHRC 1017 (Sept. 1999) (ALJ). In her decision, Judge Bulluck affirmed a citation and an order issued by the Department of Labor’s Mine Safety and Health Administration (“MSHA”), ordered Rostosky to pay a civil penalty of \$2,000, and directed that the case be dismissed upon receipt of payment. *Id.* at 1023.

The Commission received Rostosky’s petition for filing on October 5, 1999, one day past the 30-day deadline. *See* 30 U.S.C. § 823(d)(2)(A)(i); 29 C.F.R. § 2700.70(a). His petition also failed to meet the requirements of Rule 70(d) of the Commission’s Procedural Rules.<sup>1</sup> However, since Rostosky was not represented by counsel, the Commission ruled that the petition should not be dismissed because it was one day late. 21 FMSHRC 1071, 1072 (Oct. 1999).

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<sup>1</sup> Rule 70(d) of the Commission’s Procedural Rules requires that in a petition for discretionary review, “[e]ach issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record, when assignments of error are based on the record, and by statutes, regulations, or other principal authorities relied upon.” 29 C.F.R. § 2700.70(d); *see also* 30 U.S.C. § 823(d)(2)(A)(iii).

In addition, the Commission concluded that Rostosky should be afforded the opportunity to conform his petition to the requirements of the Mine Act and the Commission's Procedural Rules. *Id.* The petition was granted for the limited purpose of affording Rostosky an opportunity to amend his petition to comply with the requirements of section 113(d)(2)(A)(iii) of the Mine Act, 30 U.S.C. § 823 (d)(2)(A)(iii), and Rule 70(d), 29 C.F.R. § 2700.70(d). *Id.*

The Commission ordered Rostosky to file any amended petition within 20 days, making it due on or before November 2, 1999. *Id.* at 1073. The Commission did not receive any further submissions from Rostosky.

Rostosky did not comply with the Commission's order. Accordingly the direction for review is vacated.

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Mary Lu Jordan, Chairman

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Marc Lincoln Marks, Commissioner

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James C. Riley, Commissioner

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Theodore F. Verheggen, Commissioner

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Robert H. Beatty, Jr., Commissioner

Distribution

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