

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

September 27, 2007

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. SE 2006-107
	:	A.C. No. 01-00329-76350
v.	:	
	:	
OAK GROVE RESOURCES, LLC	:	

BEFORE: Duffy, Chairman; Jordan and Young, Commissioners

ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2000) (“Mine Act”). On April 26, 2006, Chief Administrative Law Judge Robert J. Lesnick issued to Oak Grove Resources, LLC (“Oak Grove”) a show cause order for failure to answer the Secretary of Labor’s petition for assessment of civil penalty. On July 26, 2006, Chief Judge Lesnick entered an order of default against Oak Grove.

On August 13, 2007, the Commission received a motion from Oak Grove requesting that the Commission reopen the penalty assessment proceeding and relieve Oak Grove from the order of default. The operator states that it did not timely respond to the petition for assessment of penalty issued by the Department of Labor’s Mine Safety and Health Administration (“MSHA”), the show cause order, and the default order because those documents were sent to the wrong person and address. Oak Grove explains that the documents were sent to Mike McLaughlin, Oak Grove’s General Manager, at the mine site in Adger, Alabama, rather than to its Safety Director, Michael Blevins, at “his designated address.” Mot. at 2.

The judge’s jurisdiction in this matter terminated when his decision was issued on July 26, 2006. 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)(A)(i); 29 C.F.R. § 2700.70(a). If the Commission does not direct review within 40 days of a decision’s issuance, it becomes a final decision of the Commission. 30 U.S.C. § 823(d)(1). The judge’s order became a final decision of the Commission on Tuesday, September 5, 2006.

In evaluating requests to reopen final orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure under which, for example, a party could be entitled to relief from a final order of the Commission on the basis of inadvertence or mistake. *See* 29 C.F.R. § 2700.1(b) (“the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure”); *Jim Walter Res., Inc.*, 15 FMSHRC 782, 787 (May 1993). We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Upon review of the record, we have determined that the wording of the show cause order 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 Oak Grove Res., LLC*, 28 FMSHRC 809, 811 (Oct. 2006); *Paul F. Becker Coal Co.*, 28 FMSHRC 237, 238 (May 2006).

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Michael F. Duffy, Chairman

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Mary Lu Jordan, Commissioner

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Michael G. Young, Commissioner

Distribution

Robert H. Beatty, Jr., Esq.  
Dinsmore & Shohl, LLP  
215 Don Knotts Blvd., Suite 310  
Morgantown, WV 26501

W. Christian Schumann, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
1100 Wilson Blvd., Room 2220  
Arlington, VA 22209-2296

Chief Administrative Law Judge Robert J. Lesnick  
Federal Mine Safety & Health Review Commission  
601 New Jersey Avenue, N.W., Suite 9500  
Washington, D.C. 20001-2021