FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

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WASHINGTON, DC 20001

March 25, 2004

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)	:	
v.	:	Docket No. VA 2003-1
RAT CONTRACTORS INC.	:	

BEFORE: Duffy, Chairman; Beatty, Jordan, Suboleski, and Young, 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 December 20, 2002, former Chief Administrative Law Judge David Barbour issued to RAT Contractors Inc. ("RAT Contractors") an Order to Show Cause for failure to answer the Secretary of Labor's petition for assessment of penalty. On March 12, 2003, Chief Judge Barbour issued an Order of Default dismissing this civil penalty proceeding for failure to respond to his show cause order.

On April 9, 2003, the Commission received from the president of RAT Contractors a letter setting forth RAT Contractors' reasons for challenging the Secretary's petition for assessment of penalty. Mot. at 1. RAT Contractors also states that it was "no longer in business as of June 25, 2002." *Id.* We construe RAT Contractors' letter as a request for relief from the judge's Order of Default.

The judge's jurisdiction in this matter terminated when his decision was issued on March 12, 2003. 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); 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 Commission has not directed review of the judge's

order here, which became a final decision of the Commission on April 21, 2003.

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"); *Highlands Mining & Processing Co.*, 24 FMSHRC 685, 686 (July 2002). 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).

Other than stating that it was out of business as of June 25, 2002, RAT Contractors has provided no explanation for its failure to answer the judge's show cause order. The Secretary states that she takes no position on the operator's request for relief. On the basis of the present record, we are thus unable to evaluate the merits of RAT Contractors' position. We hereby remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists to excuse its failure to respond to the show cause order and for further proceedings as appropriate.

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Michael F. Duffy, Chairman

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Robert H. Beatty, Jr., Commissioner

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Mary Lu Jordan, Commissioner

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Stanley C. Suboleski, Commissioner

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Michael G. Young, Commissioner

Distribution

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