

**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	:	Docket No. WEST 2003-268-M
ADMINISTRATION (MSHA)	:	A.C. No. 02-01221-05528
	:	Docket No. WEST 2003-269-M
v.	:	A.C. No. 02-01221-05529
	:	Docket No. WEST 2003-270-M
CKC MATERIALS DIVISION	:	A.C. No. 02-01221-05530

BEFORE: Duffy, Chairman; Beatty, Jordan, Suboleski, 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. (1994) (“Mine Act”).<sup>1</sup> On July 16, 2003, Administrative Law Judge David F. Barbour issued to CKC Materials Division (“CKC”) an Order to Show Cause in each of the three dockets for failure to answer the Secretary’s petitions for assessment of penalty. On September 23, 2003, Chief Judge Robert J. Lesnick issued an Order of Default in each docket dismissing these civil penalty proceedings for failure to respond to the show cause orders. On October 17, 2003, the Commission received from CKC a petition for discretionary review in the form of a Motion to Reopen requesting that the Commission vacate the judge’s dismissal orders and reopen the proceedings.

The Chief Judge’s jurisdiction in this matter terminated when his Orders of Default were issued on September 23, 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.

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<sup>1</sup> Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers WEST 2003-268-M, WEST 2003-269-M, and WEST 2003-270-M, which are all captioned *CKC Materials Division* and involve issues similar to those addressed in this order. 29 C.F.R. § 2700.12.

§ 2700.70(a). The petition was timely filed. On October 31, 2003, the Commission granted the petition and stayed briefing pending the issuance of a further order.

In its petition, CKC asserts that it failed to file answers to the Secretary's petitions for assessment of penalty or to the judge's orders to show cause because the owner of the company was "extremely ill" and the company's General Manager was not able to consult with the owner and file answers to the show cause orders. PDR at 1. Attached to CKC's petition is the affidavit of the company's General Manager in support of its allegations. In her response to the petition, the Secretary of Labor agreed that the Motion to Reopen was a timely filed petition for discretionary review but requested that the Commission direct the company to explain in detail why the owner's illness prevented the General Manager from responding to the Commission's orders.

In the interests of justice, we hereby remand this matter to the Chief Judge to determine whether good cause exists to excuse CKC's failure to respond to the show cause orders 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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