

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

June 14, 2007

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
 :
 :
v. : Docket No. WEST 2007-51-M
 :
CHEMICAL LIME COMPANY OF :
ARIZONA, INC. :

DIRECTION FOR REVIEW AND ORDER

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2000) (“Mine Act” or “Act”). On May 10, 2007, Chief Administrative Law Judge Robert J. Lesnick issued a Decision Approving Penalty and Order of Dismissal in this civil penalty proceeding. In his decision, the judge stated that the Commission had been informed by the Secretary of Labor that the penalty in this case had been paid. He approved the \$625 penalty assessment and dismissed the case.

On June 6, 2007, the Commission received from Chemical Lime Company of Arizona (“Chemical Lime”) a petition for discretionary review. In the petition, Chemical Lime asks that the judge’s decision be set aside and the case remanded for further proceedings before the judge.

The judge’s jurisdiction over this case terminated when he issued his decision on May 10, 2007. 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)(A)(i); 29 C.F.R. § 2700.70(a). Chemical Lime’s petition has been timely filed and is hereby granted.

On September 14, 2006, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued proposed penalty assessment No. 000098576 to Chemical Lime. In its petition, Chemical Lime alleges that it contested the underlying citation and answered the Secretary’s petition for assessment of penalty. It explains further that in October 2006, it issued a check to MSHA as payment for a different proposed penalty assessment, No. 000091132. According to Chemical Lime, it subsequently learned that \$625 of this payment was applied to the proposed penalty for penalty assessment No. 000098576, which is the subject of this penalty proceeding. It states that MSHA has now updated its records to reflect that Chemical

Lime has not paid the proposed penalty for penalty assessment No. 0000098576, and attaches a current MSHA Data Retrieval System notice indicating that the penalty has not been paid. *See* Exhibit D to Petition for Discretionary Review. The Secretary states that the factual representations in the petition for discretionary review are accurate, and that she does not oppose the operator's request that the Commission set aside the judge's order of dismissal and remand the case to the judge for further proceedings.

Based on the present record, it appears that the judge may have prematurely dismissed the proceeding. In the interest of justice, we vacate the judge's May 10 decision and remand this matter to the judge for further proceedings as appropriate. *See RBS, Inc.*, 26 FMSHRC 751, 752 (Sept. 2004).

Michael F. Duffy, Chairman

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