

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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September 9, 2004

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEVA 2004-136-M
v.	:	A.C. No. 46-00018-25238
	:	
RBS, INCORPORATED	:	

BEFORE: Duffy, Chairman; Jordan, Suboleski, and Young, Commissioners

DIRECTION FOR REVIEW AND 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 August 4, 2004, Administrative Law Judge T. Todd Hodgdon issued a Decision Approving Settlement granting the Secretary of Labor’s Motion for Decision and Order Approving Settlement and dismissing this civil penalty proceeding. Unpublished Order dated August 4, 2004. On August 16, 2004, the Commission received from RBS, Inc. (“RBS”) correspondence which we construe to be a timely petition for discretionary review. For the following reasons, we grant RBS’s petition, vacate the judge’s order, and remand for further proceedings.

In its petition, RBS alleges that the parties negotiated a settlement over the telephone, but the company disputes the terms of the settlement agreement that were set forth in the Secretary’s settlement motion to the judge. PDR. The settlement motion indicates that the Secretary’s Conference and Litigation Representative served the motion on the operator at the same time that he submitted it to the judge. *Id.* RBS asserts that it received the Secretary’s motion on the same day that the judge’s decision was issued, and thus, did not have an opportunity to verify whether the terms of the settlement correctly reflected the parties’ agreement before the judge dismissed the case. *Id.* RBS asks to resume its contest of the remaining disputed issues in this matter. *Id.* On August 20, 2004, the Secretary filed a response to RBS’s petition, stating that she does not oppose granting it. S. Resp.

The judge's jurisdiction over this case terminated when he issued his decision approving settlement on August 4, 2004. 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); 29 C.F.R. § 2700.70(a). We deem RBS's request to be a timely filed petition for discretionary review, which we grant. *See, e.g., Middle States Res., Inc.*, 10 FMSHRC 1130 (Sept. 1988).

The Secretary's representative alone signed the settlement motion, which was served on RBS on July 30, 2004, the same day that it was filed with the Commission. The judge received the motion on August 2, and issued his decision two days later on August 4. Although the parties may have reached an oral understanding to settle the case, it is not clear whether RBS had an opportunity to review the terms of the settlement agreement that was the basis for the Secretary's motion, prior to the judge's dismissal of the proceeding.

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 dismissal order and remand this matter to the judge for further proceedings as appropriate. *See McElroy Coal Co.*, 25 FMSHRC 689 (Dec. 2003).

Michael F. Duffy, Chairman

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