

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET N.W., 6TH FLOOR
WASHINGTON, D.C. 20006

October 27, 1999

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
 :
 :
v. : Docket No. WEST 99-164-M
 : A.C. No. 24-01302-05508
RAVALLI COUNTY :

BEFORE: Jordan, Chairman; Marks, Riley, Verheggen, and Beatty, Commissioners

ORDER

BY: Jordan, Chairman; Riley and Beatty, Commissioners

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 June 25, 1999, Chief Administrative Law Judge Paul Merlin issued an Order of Default to Ravalli County (“Ravalli”) for failing to answer the Petition for Assessment of Penalty filed by the Secretary of Labor on April 1, 1999, or the judge’s Order to Respondent to Show Cause issued on May 14, 1999. The judge assessed the civil penalty of \$954 proposed by the Secretary.

On September 9, 1999, Judge Merlin received a facsimile from Ravalli, which included a copy of a letter dated June 30, 1999 from Ravalli’s attorney to the Department of Labor’s Mine Safety and Health Administration’s (“MSHA”) District’s Office in Denver, Colorado, requesting that the default order be set aside and a proceeding on the merits allowed. Mot. at 1. With this request, Ravalli also attached a copy of a letter dated April 28, 1999 sent to MSHA’s District Office, contesting the citations and a letter dated June 29, 1999 from Ravalli to its attorneys regarding its actions in handling this matter and the default order entered by Judge Merlin in this proceeding. *Id.* at 3-5. In its June 30 letter to MSHA, Ravalli asserts that it believed that its April 28 letter to MSHA satisfied its filing requirements in response to the Secretary’s petition for assessment of penalties and the judge’s show cause order. *Id.* at 1. It also alleges that it believed MSHA’s District’s Office would forward its letter to the Federal Mine Safety and Health Review Commission (“the Commission”) and would have sent the letter to the Commission itself if it had known MSHA would not forward its letter. *Id.*

The judge’s jurisdiction in this matter terminated when his decision was issued on June 25, 1999. 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 received Ravalli's letter on September 9, 1999, more than 30 days after the judge's default order had become a final decision of the Commission.

Relief from a final Commission judgment or order is available to a party under Fed. R. Civ. P. 60(b)(1) in circumstances involving mistake, inadvertence, or excusable neglect. *F. W. Contractors, Inc.*, 17 FMSHRC 247, 248 (Mar. 1995); *see* 29 C.F.R. § 2700.1(b) (Federal Rules of Civil Procedure apply "so far as practicable" in the absence of applicable Commission rules). On the basis of the present record, we are unable to evaluate the merits of Ravalli's position. In the interest of justice, we reopen the proceeding, treat Ravalli's letter as a late-filed petition for discretionary review requesting relief from a final Commission decision, and excuse its late filing. *See Cecil Kilmer Flagstone*, 21 FMSHRC 480, 481 (May 1999) (treating letter misdirected to Regional Solicitor's Office as a late-filed petition requesting relief from a final order and remanding to judge); *F. W. Contractors*, 17 FMSHRC at 248 (treating letter asserting that answer had been misdirected to Regional Solicitor's Office as late-filed petition and remanding to judge).

We remand this matter to the judge, who shall determine whether final relief from default is warranted under Rule 60(b).¹ If the judge determines that such relief is appropriate, this case shall proceed pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.

Mary Lu Jordan, Chairman

James C. Riley, Commissioner

Robert H. Beatty, Jr., Commissioner

¹ In view of the fact that the Secretary does not oppose Ravalli's motion to reopen this matter for a hearing on the merits, Commissioners Marks and Verheggen conclude that the motion should be granted.