

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

January 12, 2000

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
 :
v. : Docket No. WEST 99-368-M
 : A.C. No. 02-02806-05501
VALLE CONSTRUCTION, LLC :

BEFORE: Jordan, Chairman; Marks, Riley, Verheggen, and Beatty, 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 9, 1999, Chief Administrative Law Judge Paul Merlin issued an Order of Default to Valle Construction, LLC (“Valle”) for failing to answer the petition for assessment of penalties filed by the Secretary of Labor on September 9, 1999, or the judge’s Order to Respondent to Show Cause issued on October 25, 1999. The judge assessed civil penalties in the sum of \$1,533, proposed by the Secretary.

On December 27, 1999, the Commission received a letter from Valle asserting it closed its cinder pit on October 15, 1999, and removed all of its equipment, and that it received correspondence indicating that it was excused from paying the civil penalties. Letter from Norman Gobeil, Administrator. Valle requests an explanation for the default order directing it to pay the penalties. *Id.*

The judge’s jurisdiction in this matter terminated when his decision was issued on December 9, 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). We deem Valle’s letter to be a timely filed petition for discretionary review, which we grant. *See, e.g., Middle States Resources, Inc.*, 10 FMSHRC 1130 (Sept. 1988).

On the basis of the present record, we are unable to evaluate the merits of Valle's position. In the interest of justice, we vacate the default order and remand this matter to the judge, who shall determine whether relief from default is warranted. *See General Road Trucking Corp.*, 17 FMSHRC 2165, 2166 (Dec. 1995) (deeming letter as timely filed petition for discretionary review, vacating default, and remanding to judge where pro se operator confused about Commission's procedural rules); *Amber Coal Co.*, 11 FMSHRC 131, 132-33 (Feb. 1989) (same).

Mary Lu Jordan, Chairman

Marc Lincoln Marks, Commissioner

James C. Riley, Commissioner

Theodore F. Verheggen, Commissioner

Robert H. Beatty, Jr., Commissioner

Distribution

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