

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

August 4, 1995

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. WEVA 95-53
Petitioner : A.C. No. 46-05890-03502 MHF
v. :
 : Tug Valley Coal Processing
COAL PREPARATION SERVICES, :
INCORPORATED, :
Respondent :

ORDER OF DISMISSAL

Appearance: Javier I. Romanach, Esq., U.S. Department of
Labor, Office of the Solicitor, Arlington,
Virginia, for the Petitioner.

Before: Judge Weisberger

On April 27, 1995, this case was originally scheduled for hearing for July 13, 1995, in Huntington, West Virginia, at a site to be designated by a subsequent Order. On June 27, 1995, this case was reassigned to me. On June 26, 1995, in anticipation of the reassignment of this case to me, I convened a telephone conference call with Javier I. Romanach, Esq., of the Office of the Solicitor, representing Petitioner, and Sam Hood, representing Respondent. The representatives indicated that they were each amenable to having this case rescheduled and heard on July 12, 1995. It was agreed that the hearing in this case would take place on July 12, 1995. On June 27, 1995, a Notice of Hearing was issued scheduling this case for hearing on Thursday, July 12, 1995, at the following location: City Hall, Council Chambers, 800 5th Avenue. Huntington, West Virginia. The Notice indicates it was sent to Sam Hood, Coal Preparation Services, Inc., P.O. Box 1237, 717 6th Avenue, Huntington, West Virginia 25714 (Certified Mail). A Return Receipt for this notice is postmarked July 12, 1995.

On July 14, 1995, a Show Cause Order was issued directing Respondent to show cause why a Default Order should not be entered based on Respondent's failure to appear at the hearing. On July 20, 1995, a statement was pertinent, as follows: In reference to your 7-14-95 Order to Show Cause, I went to the hearing on Thursday, 7-13 and nobody there. @

I find that Respondent has not established good cause why the case should not be dismissed. My finding is based on the following: 1) On June 26, 1995, Respondent's representative, Sam Hood, agreed to the rescheduling of the hearing in the case from July 13 to July 12; 2) On June 27, 1995, a notice was issued, scheduling this case for hearing on July 12 at a specifically designated site 3) Respondent did not appear at the hearing; 4) Respondent, in its Response to the Show Cause Order, did not set forth any facts or assertions to explain why he failed to appear at the hearing site on July 12, the date agreed to on June 26, and set forth in the Notice issued on June 27; and 5) Respondent asserted in his Response that AI went to the hearing on Thursday, July 13. He attached to the Response a copy of their original Notice issued April 27. However, this Notice did not designate a site for the hearing. A specific site was only designated in the Notice issued June 27, scheduling this case for hearing on July 12, 1995.

It is ORDERED that a default decision in this case be entered in favor of Petitioner. It is further ordered that within 30 days of this decision, Respondent shall pay a civil penalty of \$162.

Avram Weisberger
Administrative Law Judge

Distribution:

Javier I. Romanach, Esq., Office of the Solicitor,
U.S. Department of Labor, Room 516, 4015 Wilson Blvd.,
Arlington, VA 22203 (Certified Mail)

Sam Hood, Coal Preparation Services, Inc., P.O. Box 1237,
717 6th Avenue, Huntington, WV 25714 (Certified Mail)

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