

CCASE:

MSHA V. R. KLIPPSTEIN & W. O. PICKETT, JR.

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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.

July 6, 1982

SECRETARY OF LABOR, MINE SAFETY
AND HEALTH ADMINISTRATION (MSHA)

v.

Docket No. WEST 81-383

RICHARD KLIPPSTEIN and
W. O. PICKETT, JR.

DIRECTION FOR REVIEW AND ORDER

Respondent, who is pro se, has petitioned for review under the provisions of section 113 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 823, claiming that the administrative law judge erred in defaulting him.

Upon reviewing the entire record in this matter, we find that under our rules of procedure the administrative law judge had a sound basis for entering the default judgment. 29 C.F.R. § 2700.63, 2700.28 and 2700.7(b). However, because respondent is not represented by counsel, and because his petition presents a question of jurisdiction under the Act that has not been presented to the judge below, equitable application of our rules and the Act in this case persuades us to afford the respondent opportunity to be heard on his claim. It is expected, however, that from here on the respondent will follow closely the instructions of the judge and the Commission's rules of procedure. A copy of these rules is enclosed.

Accordingly, the petition for review received from respondent Klippstein is granted. The default judgment is vacated and the case is remanded for further proceedings.

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Distribution

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