

CCASE:
WILLIAM A. HARO V. MAGNA COPPER
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
September 1, 1982
WILLIAM A. HARO

v. Docket No. WEST 80-482-DM

MAGMA COPPER COMPANY

ORDER

William A. Haro has petitioned for discretionary review of a decision of an administrative law judge issued on July 23, 1982. Magma Copper has filed a motion requesting that the petition be dismissed as untimely. For the reasons that follow, the petition is dismissed as untimely.

The Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq., provides that "any person adversely affected or aggrieved by a decision of an administrative law judge, may file and serve a petition for discretionary review by the Commission of such decision within 30 days after the issuance of such decision." 30 U.S.C. § 823 (d) (2)(A)(i) (emphasis added). Further, Rules 5(d) and 70(a) of the Commission's rules of procedure expressly provide that "filing of a petition for discretionary review is effective only upon receipt." 29 C.F.R. §§ 2700.5(d), 70(a).

The administrative law judge's decision in this case was issued on July 23, 1982. The thirtieth day following the issuance of the judge's decision was August 22, 1982. Counsel did not mail the petition for discretionary review until August 27, 1982. It was not received, and therefore filed, at the Commission until August 30, 1982, the thirty-eighth

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day after the issuance of the judge's decision. Accordingly, under the statute and the Commission's rules the petition was untimely filed. Valley Rock and Sand Corp., 2 BNA MSHC 1673 (Docket No. WEST 80-3-M, March 29, 1982) (Order denying motion for reconsideration); Sunbeam Coal Corp., 2 FMSHRC 775 (1980).

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Distribution
Thomas G. Martin, Esq.
1601 North Stone Avenue
Tucson, Arizona 85705

for William Haro
N. Douglas Grimwood, Esq.
Twitty, Sievwright & Mills
1700 TowneHouse Tower
100 West Clarendon
Phoenix, Arizona 85013
for Magma Copper Co.
Administrative Law Judge Jon D. Boltz
FMSHRC
333 West Colfax Ave.
Denver, Colorado 80204