

CCASE:
MSHA V. MOHAVE CONCRETE & MATERIALS
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FMSHRC-WDC
November 18, 1986

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

v. Docket No. WEST 86-14-M

MOHAVE CONCRETE AND MATERIALS
INCORPORATED

BEFORE: Ford, Chairman; Backley, Doyle, Lastowka and Nelson,
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. (1982). On October 9, 1986, Chief Administrative Law Judge Paul Merlin issued an Order of Default finding respondent, Mohave Concrete and Materials, Inc. ("Mohave") in default, for its failure to respond to the judge's August 20, 1986 Show Cause Order, and assessing civil penalties totalling \$1,231. Thereafter, on October 22, 1986 Mohave sent a letter to the judge requesting the judge to vacate the Order of Default and to reopen the case. We consider Mohave's letter to the judge to be a timely Petition for Discretionary Review. 29 C.F.R. § 2700.5(b) and 2700.70(a).

Default is a harsh remedy, and if a defaulting party can make a showing of adequate or good cause for a failure to respond to an order, the failure may be excused and proceedings on the merits permitted. M.M. Sundt Constr. Co., 8 FMSHRC 1269 (September 1986). Mohave asserts that its failure to respond to the August 20, 1986 Order to Show Cause is attributable to the mistake or neglect of a former bookkeeper.

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Accordingly, we vacate the Order of Default and remand to the judge for such further proceedings as he deems appropriate as to either the sufficiency of the cause asserted or the underlying merits of the case. 1/

Ford B. Ford, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

James A. Lastowka, Commissioner

1/ Commissioner L. Clair Nelson believes that Mohave has not shown good cause for failing to comply with the Chief Administrative Law Judge's Show Cause Order of August 20, 1986, and in the absence of any argument concerning due process in this proceeding he would affirm the judge's order of default.

~1648

Distribution

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