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MSHA V. WALKER STONE
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
February 16, 1990

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v. Docket No. CENT 89-129-M

WALKER STONE COMPANY, INC.

BEFORE: Ford, Chairman; Backley, Doyle, Lastowka and Nelson,
Commissioners

ORDER

BY THE COMMISSION:

In this civil penalty proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1982), Commission Chief Administrative Law Judge Paul Merlin issued an Order of Default on January 17, 1990, finding Walker Stone Company, Inc. ("Walker Stone") in default for failure to answer the Secretary of Labor's civil penalty proposal and the judge's order to show cause. The judge assessed civil penalties of \$178 as proposed by the Secretary of Labor. For the reasons that follow, we vacate the default order and remand the case for further proceedings.

On January 26, 1990, David S. Walker, Walker Stone's president, wrote a letter to Judge Merlin asserting that on October 20, 1989, Mr. Walker had contacted an attorney for the Department of Labor requesting an extension of time for filing an answer to the Secretary's penalty proposal until after a ruling from an administrative law judge in another pending case.

Judge Merlin's jurisdiction over this case terminated when his

decision was issued. 29 C.F.R. § 2700.65(c). Under the Mine Act and the Commission's procedural rules, once a judge's decision has issued, relief from the decision may be sought by filing with the Commission a petition for discretionary review within 30 days of the decision. 30 U.S.C. § 823(d)(2); 29 C.F.R. § 2700.70(a). Walker Stone's January 26 letter was received by the Commission on January 29, 1990. We will treat Walker Stone's letter as a timely petition for discretionary

review. E.g., Blue Circle Atlantic, 11 FMSHRC 2144 (November 1989).

The record discloses that on May 25 and 31, 1989, an inspector of the Department of Labor's Mine Safety and Health Administration ("MSHA") issued seven citations to Walker Stone. Upon notification by MSHA of civil penalties proposed for the alleged violations totaling \$178, Walker Stone filed a "Blue Card" request for a hearing before this independent Commission. On August 24, 1989, counsel for the Secretary filed the Secretary's penalty proposal with the Commission. When no answer to the penalty proposal was filed, the judge, on November 1, 1989, issued a show cause order directing Walker Stone to file an answer within 30 days or show good reason for its failure to do so. As noted, Walker Stone's president claims to have asked the Secretary's attorney, on October 20, 1989, for a delay in filing the answer.

The party against whom the Secretary seeks a penalty must file an answer with this Commission within 30 days after service of the Secretary's proposal for penalty. 29 C.F.R. § 2700.5(b) & .28. Thus, Walker Stone misdirected its request for an extension of time for filing its answer. The administrative law judge, not counsel for the Secretary, regulates the course of this review proceeding. We note, however, that Walker Stone is proceeding pro se and appears to confuse the roles of the Department of Labor and this independent adjudicatory Commission in this proceeding. For this reason and because Walker Stone claims that prior to issuance of the show cause order it sought an extension of time for filing its answer, we believe that the operator should have the opportunity to present its position to the judge. E.g., Amber Coal Co., 11 FMSHRC 131, 132 (February 1989).

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For the foregoing reasons, the judge's default order is vacated and the matter is remanded to the judge, who shall determine whether final relief from default is appropriate. See, e.g., Kelley Trucking Co., 8 FMSHRC 1867, 1869 (December 1986).

Distribution

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