

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET N.W., 6TH FLOOR

WASHINGTON, D.C. 20006

January 24, 1997

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. YORK 96-61-M
	:	
DREW DRILLING & BLASTING INC.	:	
	:	

BEFORE: Jordan, Chairman; Marks and Riley, Commissioners¹

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. (1994) (AMine Act@). On December 16, 1996, Chief Administrative Law Judge Paul Merlin issued an Order of Default to Drew Drilling & Blasting Inc. (ADrew@) for failing to answer the proposal for assessment of penalty filed by the Secretary of Labor on August 21, 1996, or the judge-s Order to Respondent to Show Cause issued on October 18, 1996. The judge assessed civil penalties of \$2,500 proposed by the Secretary.

On January 13, 1997, the Commission received a letter from Edwin E. Drew, Jr., president of Drew, asserting that he was unable to respond to the proposal for assessment and show cause order because he was then undergoing chemotherapy treatments which left him incapacitated. Mr. Drew also asserts that his niece, who had worked part-time for the company as a bookkeeper/secretary, left to take a full-time job elsewhere, and that other friends and family who assisted with the company-s paperwork during the period of his treatment Adid not recognize the importance of the notice sent by the Secretary of Labor and it was overlooked.@ He also indicates in the letter that Drew is a small company with only two employees.

¹ Pursuant to section 113(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 823(c), this panel of three Commissioners has been designated to exercise the powers of the Commission.

The judge's jurisdiction in this matter terminated when his decision was issued on December 18, 1996. 29 C.F.R. ' 2700.69(b). Under the Mine Act and the Commission's procedural rules, relief from a judge's decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. ' 823(d)(2); 29 C.F.R. ' 2700.70(a). We deem Drew's letter to be a timely filed petition for discretionary review, which we grant. *See, e.g., Middle States Resources, Inc.*, 10 FMSHRC 1130 (September 1988).

On the basis of the present record, we are unable to evaluate the merits of Drew's position. In the interest of justice, we vacate the default order and remand this matter to the judge, who shall determine whether relief from default is warranted. *See Hickory Coal Co.*, 12 FMSHRC 1201, 1202 (June 1990).

Mary Lu Jordan, Chairman

Marc Lincoln Marks, Commissioner

James C. Riley, Commissioner