

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR

WASHINGTON, D.C. 20006

March 27, 1995

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
 :
v. : Docket No. WEVA 94-391
 :
MINERAL TRANSPORT, INC. :

BEFORE: Jordan, Chairman; Doyle, Holen and Marks, 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. (1988) ("Mine Act"). On February 21, 1995, Chief Administrative Law Judge Paul Merlin issued an Order of Default to Mineral Transport, Inc. ("Mineral") for failing to answer the proposal for assessment of civil penalty filed by the Secretary of Labor on October 7, 1994, or the judge's Order to Respondent to Show Cause of December 21, 1994. The judge assessed the civil penalties of \$800 proposed by the Secretary.

On March 8, 1995, the Commission received a letter from Keith Martin, Mineral's manager, in which he asserts that Mineral had sent its reply on January 5, 1995, to the Department of Labor's Office of the Solicitor in Arlington, Virginia.

The judge's jurisdiction over this case terminated when his default order was issued on February 21, 1995. 29 C.F.R. ' 2700.69(b). 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 Mineral'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 Mineral's position. In the interest of justice, we remand this matter to the judge, who shall determine whether default is warranted. *See Hickory Coal Co.*, 12 FMSHRC 1201, 1202 (June 1990).

For the reasons set forth above, we vacate the judge's default order and remand this matter for further proceedings.

Mary Lu Jordan, Chairman

Joyce A. Doyle, Commissioner

Arlene Holen, Commissioner

Marc Lincoln Marks, Commissioner

TALLY SHEET

Mineral Transport, Inc., Docket No. WEVA 94-391

Commissioner

Date

_____ Vacate default order and remand to the judge (order to that effect attached).

_____ Other:

Comments:

Please return to Lynne Bowman