

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

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WASHINGTON, DC 20001

May 2, 2006

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEVA 2006-35
v.	:	A.C. No. 46-08909-70581 A
	:	
RONALD D. STOKES	:	

BEFORE: Duffy, Chairman; Jordan, Suboleski, and Young, Commissioners

DIRECTION FOR REVIEW AND ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2000) (“Mine Act”). On February 7, 2006, Chief Administrative Law Judge Robert Lesnick issued to Ronald D. Stokes an Order to Show Cause for failing to answer the Secretary of Labor’s petition for assessment of civil penalty. On March 23, 2006, Chief Judge Lesnick issued an Order of Default entering judgment for the Secretary and directing Mr. Stokes to pay the proposed civil penalty immediately.

On April 7, 2006, the Commission received correspondence from Mr. Stokes which we construe to be a timely petition for discretionary review. In that petition, Mr. Stokes seeks to reopen the case and states that he was discussing settlement with the Solicitor’s Office and “was confused about the fact I should have still made contact with the Commission.” The Secretary states that she does not oppose granting Mr. Stokes’ petition.

The Chief Judge’s jurisdiction over this case terminated when he issued his default order on March 23, 2006. 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 Mr. Stokes’ correspondence to be a timely filed petition for review, which we grant. *See, e.g., Middle States Res., Inc.*, 10 FMSHRC 1130 (Sept. 1988).

Upon review of the record, we have determined that the wording of the Order to Show Cause did not conform to the Commission's Procedural Rules. Accordingly, in the interest of justice, we hereby vacate the Order of Default and remand this matter to the Chief Judge for further appropriate proceedings. *See REB Enterprises, Inc.*, 18 FMSHRC 311 (March 1996).

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

Distribution

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