

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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August 15, 2005

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 2005-51-M
Petitioner	:	A. C. No. 24-02196-39845
v.	:	
	:	J C Crusher
JAMES CARNEY CONSTRUCTION,	:	
Respondent	:	

ORDER DENYING REQUEST TO REOPEN
ORDER TO PAY

This case is before me pursuant to an order of the Commission dated April 18, 2005, remanding this matter for further consideration and determination as to whether the operator, James Carney Construction (“Carney”) is entitled to relief under Rule 60(b) of the Federal Rules of Civil Procedure.¹ In particular, Rule 60(b)(1) provides relief from a final judgment in cases where there has been a “mistake, inadvertence, surprise, or excusable neglect.” Fed. R. Civ. P. 60(b)(1).

This matter arose because Carney failed to answer the Secretary of Labor’s (“Secretary”) petition for assessment of penalty, and then failed to answer my subsequent show cause order for the failure answer the Secretary’s penalty petition. Carney claims he never received the February 2, 2005 show cause order, stating he was out of town on that date. The Secretary indicates that she does not oppose the request to reopen.

The Commission has stated that default is a harsh remedy, and if the defaulting party makes a showing of adequate or good cause for failing to timely respond, the case may be reopened. *Coal Prep. Services, Inc.*, 17 FMSHRC 1529, 1530 (Sept.1995). In addition, the Commission has held pleadings drafted by *pro se* litigants to a less stringent standard than that applied to documents drafted by attorneys. *Marin v. Asarco, Inc.*, 14 FMSHRC 1269, 1273 (Aug. 1992)(citing *Haines v. Kerner*, 404 U.S. 519, 520 (1972)).

Despite Carney’s claim of having never received the show cause order, his signature is on the receipt for the show cause order. From Carney’s letter, it appears he disagreed with the imposition of the fine, felt that he did not have to pay it, and, thus, ignored court documents

¹While the Commission is not obligated to adhere to the Federal Rules of Civil Procedure, the Commission has found guidance and has applied “so far as practicable” Rule 60(b). 29 C.F.R. § 2700.1(b).

sent to him. The Commission makes great efforts to afford due process to all parties even when pleadings are not crafted as artfully or clearly as they could or should be. However, a party's blatant disregard for Commission procedure does not warrant Rule 60(b) relief.

Accordingly, this case is dismissed and the Respondent is **ORDERED** to pay the proposed penalty assessment of \$475.00.

Robert J. Lesnick
Chief Administrative Law Judge

Distribution: (Certified Mail)

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James Carney, Owner, James Carney Construction, P.O. Box 928, Glasgow, MT 59230

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