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SOL (MSHA) V. JIM WALTER RESOURCES  
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION  
1730 K STREET NW, 6TH FLOOR  
WASHINGTON, D.C. 20006

SECRETARY OF LABOR, :  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA) :  
v. : Docket No. SE 94-306  
JIM WALTER RESOURCES, INC. :

BEFORE: Holen, Chairman; Backley and Doyle, Commissioners(Footnote 1)

ORDER

BY THE COMMISSION:

In this matter arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1988)("Mine Act" or "Act"), Jim Walter Resources, Inc. ("JWR") filed with the Commission a motion seeking to reopen an uncontested civil penalty assessment that became a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. 815(a). As the basis for its motion, JWR relies upon Fed. R. Civ. P. 60(b) ("Rule 60(b)"). The Secretary of Labor filed a response requesting an evidentiary hearing before an administrative law judge to determine whether JWR's motion should be granted. For the reasons that follow, we grant JWR's motion in part.

The Commission received JWR's Motion for Relief from Final Order on March 14, 1994. JWR states that it failed to file with the Department of Labor's Mine Safety and Health Administration ("MSHA") a "Green Card" notice of contest challenging MSHA's proposed civil penalty within the required 30-day period set forth in 30 U.S.C. 815(a). JWR asserts that its counsel had an unusually heavy case load at the time and that there was an interoffice delay in the transmittal of the penalty assessment to him. JWR asks the Commission to reopen this matter pursuant to Rule 60(b) so that it may file its notice of contest. The proposed penalty has not been paid.

The Secretary's response requests a hearing to determine, inter alia, whether the Commission has jurisdiction to reopen the case and, if so, whether JWR has satisfied the requirements for reopening under Rule 60(b).

Section 105(a) of the Mine Act requires that, after issuing a citation

<sup>1</sup> Pursuant to section 113(c) of the Mine Act, 30 U.S.C. 823(c), we have designated ourselves a panel of three members to exercise the powers of the Commission.

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or withdrawal order to a mine operator for an alleged violation, the Secretary notify the operator of "the civil penalty proposed to be assessed." 30 U.S.C. 815(a). Section 105(a) allows the operator 30 days to contest the propose penalty and further provides that, if the operator fails to contest it, the assessment "shall be deemed a final order of the Commission and not subject to review by any court or agency." Id.

JWR failed to contest the proposed assessment within 30 days, and, accordingly, it became a final order of the Commission. The Commission has held that in appropriate circumstances and pursuant to Rule 60(b), it possesses jurisdiction to reopen uncontested assessments that have become final under section 105(a). Jim Walter Resources, Inc., 15 FMSHRC 782, 787-90 (May 1993). Rule 60(b) relief from a final order is available in circumstances such as a party's mistake, inadvertence, or excusable neglect, but cannot be used to relieve a party from the consequences of its "deliberate litigation choices." Id. at 790.

On the basis of the present record, we are unable to evaluate the merits of JWR's position. In the interest of justice, we reopen this matter and remand it for assignment to a judge to determine whether JWR has met the criteria for relief under Rule 60(b). The judge shall take evidence with respect to the reasons for JWR's failure to file a timely contest. If the judge determines that relief under Rule 60(b) is appropriate and permits JWR to file a notice of contest, this case shall proceed pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.

For the foregoing reasons, JWR's motion is granted in part and this matter is remanded for assignment.

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner