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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	:	Docket SE 94-383
ADMINISTRATION (MSHA)	:	A.C. # 01-01401-04000
	:	SE 94-384
v.	:	A.C. # 01-01322-03949
	:	SE 94-389
JIM WALTER RESOURCES, INC.	:	A.C. # 01-01401-03988
	:	SE 94-390
	:	A.C. # 01-01401-03999

BEFORE: Jordan, Chairman; Backley, Doyle and Holen, Commissioners

ORDER

BY THE COMMISSION:

In these matters 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 motions seeking to reopen uncontested civil penalty assessments that had become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. 815(a). The Commission received the motions on May 9, 1994. As the basis for its motions, JWR relies upon Fed. R. Civ. P. 60(b)("Rule 60(b)"). The Secretary of Labor filed responses requesting evidentiary hearings before an administrative law judge to determine whether JWR's motions should be granted. We grant the motions in part.

JWR states in each motion 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 penalties within the 30-day period set forth in section 105(a); that its counsel had an unusually heavy case load at the time and that there was a delay in the interoffice transmittal of the penalty assessments to him; and that it has implemented a procedure to correct problems with its interoffice mail. JWR asks the Commission to reopen these matters pursuant to Rule 60(b) so that it may file its notices of contest. The proposed penalties have not been paid.

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

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Section 105(a) of the Mine Act requires that, after issuing a citation or withdrawal order 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 proposed 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 assessments within 30 days, and, accordingly, they have become final orders 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)("JWR"); see also, Jim Walter Resources, Inc., 16 FMSHRC 721, 722 (April 1994). 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." JWR, 15 FMSHRC 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 these matters and remand them 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 timely contests. If the judge determines that relief under Rule 60(b) is appropriate and permits JWR to file notices of contest, these cases 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 these matters are remanded for assignment.

Mary Lu Jordan, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

Arlene Holen, Commissioner