

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

September 16, 1994

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
 :
v. : Docket No. KENT 94-1051
 : A.C.# 15-17331-03510
ROCKY HOLLOW COAL COMPANY, INC. :
 :
 :

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

ORDER

BY THE COMMISSION:

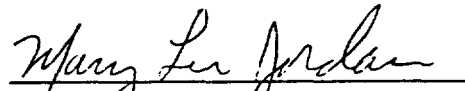
This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1988) ("**Mine Act**" or "**Act**"). On August 1, 1994, the Commission received from Rocky Hollow Coal Company, Inc. ("**Rocky Hollow**") a request to reopen uncontested civil penalty assessments that had become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

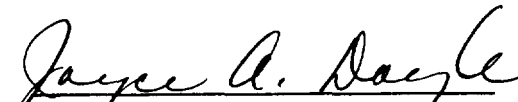
Section 105(a) of the Mine Act requires the Secretary of Labor to notify the operator of "**the** civil penalty proposed to be **assessed**" after issuing a citation or order for an alleged violation. 30 U.S.C. § 815(a). Section 105(a) allows the operator 30 days to contest a proposed penalty and further 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.** Rocky Hollow 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 penalties within the 30day period set forth in section 105(a), due to "**the** press of business and management of other **litigation**" in which its counsel was involved, and the misplacement of its **file** by its counsel, which resulted in the matter not appearing on **counsel's** calendar. Rocky Hollow asks the Commission to reopen this matter so that it may file its notice of contest.

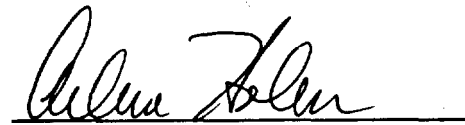
Rocky Hollow failed to contest the proposed assessments within 30 days and, accordingly, they have become final orders of the Commission. The Commission has held that in appropriate circumstances and pursuant to Fed. R. Civ. P. **60(b) ("Rule 60(b)"),** it possesses jurisdiction to reopen uncontested assessments that have become final under section 105(a). Jim Walter Resources, Inc., 15 FMSHRC 782, 786-89 (May 1993); see also, Jim Walter Resources, Inc., 16 FMSHRC 1209, 1210 (June 1994). Rule **60(b)** relief from a **final** order is available in circumstances such as a party's mistake, inadvertence, or excusable neglect.

On the basis of the present record, we are unable to evaluate the merits of Rocky Hollow's position. **In** the interest of justice, we reopen the matter and remand it for assignment to a judge to determine whether Rocky Hollow has met the criteria for relief under Rule 60(b). If the judge determines that relief under Rule **60(b)** is appropriate **and** permits Rocky Hollow to file its 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, Rocky Hollow 's request is granted in part and this matter is remanded for assignment.


Mary Lu Jordan, Chairman


Joyce A. Doyle, Commissioner


Arlene **Holen**, Commissioner

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