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SOL (MSHA) V. PEABODY COAL
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SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
 :
v. : Docket No. WEVA 94-392
 : A.C. # 46-07908-03547
PEABODY COAL COMPANY :
 :
 :
 :

BEFORE: Jordan, Chairman; Doyle, Holen and Marks, 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 September 6, 1994, the Commission received from Peabody Coal Company ("Peabody") a request to reopen an uncontested civil penalty assessment that had become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. 815(a). The Secretary of Labor ("Secretary") has not opposed Peabody's request.

Section 105(a) of the Mine Act requires the Secretary 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.* Peabody failed to contest a proposed assessment within 30 days and, accordingly, it has become a final order of the Commission.

Peabody's counsel states that Peabody failed to file with the Department of Labor's Mine Safety and Health Administration ("MSHA") a "Green Card" notice of contest

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challenging MSHA's proposed civil penalty within the 30-day period set forth in section 105(a), due to confusion among temporary employees in its legal department regarding procedures for contesting proposed civil penalties. 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). 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 Peabody's position. In the interest of justice, we reopen the matter and remand it for assignment to a judge to determine whether Peabody has met the criteria for relief under Rule 60(b). If the judge determines that relief under Rule 60(b) is appropriate and permits Peabody 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, Peabody's request is granted in part and this matter is remanded for assignment.

Mary Lu Jordan, Chairman

Joyce A. Doyle, Commissioner

Arlene Holen, Commissioner

Marc L. Marks, Commissioner