CCASE:
SOL (MSHA) V. THE PIT
DDATE:
19941028
TTEXT:

~2033

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)	:	
v.	:	Docket No. WEST 94-516-M
	:	A.C. No. 24-01958-05503
THE PIT	:	

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

ORDER

BY: Jordan, Chairman; Doyle and Holen, Commissioners

In this matter arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1988) ("Mine Act"), The Pit ("Pit") filed with the Commission a request seeking 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") filed a response opposing the granting of Rule 60(b) relief.

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.

Pit failed to timely file a "Green Card" notice of contest challenging the proposed civil penalty assessment by the Department of Labor's Mine Safety and Health Administration ("MSHA"). Pit states that it first became aware of this matter when it received a letter dated March 30, 1994, from MSHA's Office of Assessments requesting payment of the penalty. Pit asserts that this letter arrived after the time for contesting the proposed civil penalty assessment had passed, that MSHA had not sent the notice of violation to Pit's current address, that confusion resulted because of another MSHA proceeding involving Pit, and that Pit's representative was out of the country during the time for contest. Pit essentially asks the Commission to reopen this matter pursuant to Fed. R. Civ. P. 60(b) ("Rule 60(b)") so that it may file its notice of contest. The proposed penalty has not been paid.

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. Requests to reopen under Rule 60(b) must be made within a reasonable time and are committed to the sound discretion of the judicial tribunal in which relief is sought. See, e.g., Randall v. Merrill Lynch, 820 F.2d 1317, 1320-21 (D.C. Cir. 1987), cert. denied, 484 U.S. 1027 (1988). The Court stated in Randall: "Rule 60(b) is the mechanism by which courts temper the finality of judgments with the necessity to distribute justice. It is a tool which ... courts are to use sparingly ...." 820 F.2d at 1322. See also Tolbert v. Chaney Creek Coal Corp., 12 FMSHRC 615, 619 n.1 (April 1990).

Because Pit failed to contest the proposed assessment within 30 days, it became a final order of the Commission on February 12, 1994. Pit claims that it had no notice of the instant penalty assessment until it received MSHA's March 30, 1994, letter and complains that the Secretary served the notice at an incorrect address. Under 30 C.F.R. 41.12, it is Pit's responsibility to inform MSHA of its correct address and Pit must bear the consequences of its failure to do so. The Secretary notes that receipt of the proposed assessment was acknowledged on January 13, 1994, by an individual who is listed on Pit's Legal Identity Report as Pit's bookkeeper. Thus, service at the address Pit had registered with MSHA provided Pit with notice of the proposed penalty assessment on January 13, 1994.

Similarly, we are not persuaded that the absence of Pit's owner from December 20, 1993, through March 15, 1994, excuses Pit's failure to challenge the Secretary's penalty assessment. Pit states that, during this period, it requested and received an extension of time to respond to a proposed penalty assessment in another case. Thus, the owner's absence was no impediment to a timely response from Pit to the proposed penalty assessment in this case.

We also find Pit's assertion that confusion resulted from the Secretary's proposal of civil penalties in another case during the same time period to be lacking in merit . Even if confusion may have existed at the start of these proceedings, Pit explicitly acknowledged, in a letter to MSHA dated April 5, 1994, the existence of two separate cases. Although MSHA declined, by letter dated April 25, 1994, to process Pit's untimely penalty contest, Pit failed to request relief from the Commission until June 27, 1994, more than two months later. Accordingly, we conclude that Pit's request does not justify relief under Rule 60(b).

~2035
For the foregoing reasons, Pit's request is denied.

_____
Mary Lu Jordan, Chairman

_____
Joyce A. Doyle, Commissioner

_____
Arlene Holen, Commissioner

_____
Marc L. Marks, Commissioner