



and injunctive relief due to New Trinity's "extreme negligence and lack of good faith." Mot. to Compel at 3.

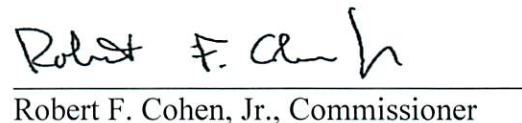
The Commission's procedural rules provide that the Judge's jurisdiction over a matter terminates upon the issuance of the Judge's decision. 29 C.F.R. § 2700.69(b). The Judge thus sent the Motion to Compel to the Commission's General Counsel. The Judge's law clerk sent an e-mail to the parties stating that the issues in the motion had been referred to the Commission.

The decision of the Judge became the final decision of the Commission on January 3, 2017, 40 days after its issuance. 30 U.S.C. § 823(d)(1). Consequently, under these unique circumstances, we construe McDonald's motion to compel as a motion to reopen pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. In reopening closed cases, the Commission has sought guidance in, and has applied "so far as practicable" and as appropriate, Rule 60(b), which deals with relief from judgments, orders or proceedings. See 29 C.F.R. § 2700.1(b). See also, e.g., *M.M. Sundt Constr. Co.*, 8 FMSHRC 1269, 1270-71 (Sept. 1986). For example, in reopening a case in aid of post-judgment compliance, the Commission relied on Rule 60(b)(6) ("any other reason that justifies relief"). See *Johnson v. Lamar Mining Co.*, 10 FMSHRC 506 (Apr. 1988). See also *Tolbert v. Chaney Creek Coal Corp.*, 12 FMSHRC 615, 618-19 (Apr. 1990); 12 James Wm. Moore et al., *Moore's Federal Practice* (3d. ed. 2015) ¶ 60.48. Accordingly, as an initial matter, we grant the Complainant's motion to reopen.

However, in the present case, the attorneys for McDonald and New Trinity have informed the Commission that the required payments had been made after the Judge referred the Complainant's Motion to Compel to the Commission's General Counsel. Payment was made within 30 days of the Judge's Decision Approving Settlement, Dismissal Order and Order to Pay. Thus, the need to compel payment or to order the injunctive relief sought has become moot, and the case is hereby dismissed.<sup>1</sup>

  
Mary Lu Jordan, Chairman

  
Michael G. Young, Commissioner

  
Robert F. Cohen, Jr., Commissioner

  
William I. Althen, Commissioner

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<sup>1</sup> While the Complainant sought a daily penalty for non-payment, and asserted that the Commission's ability to fashion a remedy is "relatively unlimited," we find it unnecessary to reach this issue. Mot. to Compel at 3.

Distribution

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