FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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DEC 17 2015

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA),	:	Docket No. KENT 2015-129
	:	A.C. No. 15-18725-341621
v.	:	Docket No. KENT 2015-130
	:	A.C. No. 15-17077-341615
MANALAPAN MINING COMPANY, INC.	:	Docket No. KENT 2015-131
	:	A.C. No. 15-19514-341628

BEFORE: Jordan, Chairman; Cohen, and Nakamura, Commissioners[1]

ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) ("Mine Act"). On November 17, 2014, the Commission received from Manalapan Mining Company, Inc. ("Manalapan") three motions seeking to reopen three 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).[2]

Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a).

[1] This case has been delegated to a panel of three Commissioners pursuant to section 113(c) of the Mine Act for the limited purpose of assessing the merits of the motion to reopen. 30 U.S.C. § 823(c).

[2] Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers KENT 2015-129, KENT 2015-130, and KENT 2015-131, which are all captioned MANALAPAN MINING COMPANY, INC. and involve similar procedural issues. 29 C.F.R. § 2700.12.

We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) ("*JWR*"). In evaluating requests to reopen final orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure under which the Commission may relieve a party from a final order of the Commission on the basis of mistake, inadvertence, excusable neglect, or other reason justifying relief. *See* 29 C.F.R. § 2700.1(b) ("the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure"); *JWR*, 15 FMSHRC at 787. We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Records of the Department of Labor's Mine Safety and Health Administration ("MSHA") indicate that the proposed assessments were delivered on February 4, 2014, and became final orders of the Commission on March 6, 2014. The assessments were issued for unwarrantable failure violations under section 104(d)(1) of the Mine Act at three separate Manalapan mines. Manalapan asserts that while it received the proposed assessments, it cannot currently locate copies of the proposed assessments. Manalapan did not file these motions to reopen until 256 days after the proposed assessments became final orders of the Commission. The Secretary opposes the requests to reopen, asserting that the operator failed to timely contest the proposed assessments because of its inadequate internal procedures.

The Commission has made it clear that where a failure to contest a proposed assessment results from an inadequate or unreliable internal processing system, the operator has not established grounds for reopening the assessment. *Shelter Creek Capital, LLC*, 34 FMSHRC 3053, 3054 (Dec. 2012); *Oak Grove Res., LLC*, 33 FMSHRC 103, 104 (Feb. 2011); *Double Bonus Coal Co.*, 32 FMSHRC 1155, 1156 (Sept. 2010); *Highland Mining Co.*, 31 FMSHRC 1313, 1315 (Nov. 2009); *Pinnacle Mining Co.*, 30 FMSHRC 1066, 1067 (Dec. 2008); *Pinnacle Mining Co.*, 30 FMSHRC 1061, 1062 (Dec. 2008). In the circumstances of these cases, the operator's misplacing of the proposed assessments represents an inadequate internal processing system, and fails to establish good cause for reopening a final order.

We further note that according to MSHA records, two of the three mines involved here have extremely large unpaid penalty assessments which have become final orders of the Commission. The Manalapan RB No. 5 Mine, which is the subject of Docket No. KENT 2015-130, has an outstanding balance of $88,268 comprising 22 unpaid assessments dating back to 2009. The Manalapan D-1 Mine, which is the subject of Docket No. 2015-131, has an outstanding balance of $106,835 comprising 24 unpaid assessments dating back to 2010. (The other mine in the group, the Manalapan RB-11 Mine which is the subject of Docket No. 2015-129, has an outstanding balance of $8443.)

In *H&D Mining, Inc.*, 33 FMSHRC 2121, 2123 (Sept. 2011), a case involving a motion to reopen a default under section 105(a) of the Mine Act where the operator had a large sum of unpaid penalty assessments, the Commission stated:

> Additionally, it is well recognized in federal jurisprudence that the issue of whether the movant acted in good faith is an important factor in determining the existence of excusable neglect. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship,* 507 U.S. 380, 395 (1993); *FG Hemisphere Assocs., LLC v. Democratic Republic of Congo,* 447 F.3d 835, 838 (D.C. Cir. 2006). Likewise, the Commission has recognized that a movant's good faith, or lack thereof, is relevant to a determination of whether the movant has demonstrated mistake, inadvertence, surprise or excusable neglect within the meaning of Rule 60(b)(1) of the Federal Rules of Civil Procedure. *M.M. Sundt Constr. Co.,* 8 FMSHRC 1269, 1271 (Sept. 1986); *Easton Constr. Co.,* 3 FMSHRC 314, 315 (Feb. 1981). As pointed out by the Secretary, H&D's delinquency record and its strategy of waiting to file a request to reopen until it was sued for payment collection and then omitting any mention of that action in its request, demonstrates a lack of good faith militating against granting extraordinary relief in this case. *Oak Grove Res., LLC,* 33 FMSHRC ____, slip op. at 3-4, No. SE 2011-16 (June 7, 2011).

Similarly, in these cases Manalapan's pattern of repeatedly disregarding final penalty assessments bespeaks a lack of good faith which militates against granting its motion to reopen.

Accordingly, we deny Manalapan's motions.

Mary Lu Jordan, Chairman

Robert F. Cohen Jr., Commissioner

Patrick K. Nakamura, Commissioner

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