

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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April 27, 2009

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. KENT 2008-1465
v.	:	A.C. No. 15-02132-151119
	:	
WEBSTER COUNTY COAL, LLC	:	

BEFORE: Duffy, Chairman; Jordan, Young, and Cohen, 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. (2006) (“Mine Act”). On August 20, 2008, the Commission received from Webster County Coal, LLC (“Webster”) a request to reopen a 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).

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).

On January 28, 2008, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued two orders to Webster’s Dotiki Mine. Webster contested those orders, Nos. 6696967 and 6696968. The proceedings were assigned docket numbers KENT 2008-548-R and KENT 2008-549-R and stayed pending assessment of proposed penalties. MSHA issued a proposed penalty with respect to Order No. 6696967 in Assessment Case No. 000150871 on May 15, 2008. MSHA issued a proposed civil penalty with respect to Order 6696968 in Assessment Case No. 000151119 on May 19, 2008. Webster received both assessments on May 22, 2008. In its motion, Webster asserts that it mailed the assessment form for Case No. 000150871 on June 13, 2008, indicating its contest of several proposed penalties, including the penalty related to Order 6696967. Webster asserts that it believed it had contested the assessment including Order No. 6696968 at the same time. Webster learned that it had failed to timely contest the

proposed penalty when it received a delinquency notice on August 8, 2008 and shortly thereafter filed the instant motion. Webster states that an internal investigation revealed that the assessment form was not submitted in a timely manner because of an “unintentional mistake” that caused the form not to be processed at the same time as the form for the other order.

The Secretary states that she opposes the reopening of the proposed penalty assessment on the grounds that the operator makes no showing of exceptional circumstances warranting reopening.

We have held 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 section 105(a) orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure under which, for example, a party could be entitled to relief from a final order of the Commission on the basis of mistake, inadvertence, or excusable neglect. *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).

Having reviewed Webster's request and the Secretary's response, in the interests of justice, we hereby remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists for Webster's failure to timely contest the penalty proposal and whether relief from the final order should be granted. If it is determined that such relief is appropriate, this case shall proceed pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

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