FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW
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July 7, 2009

SECRETARY OF LABOR,	:	Docket No. KENT 2009-419
MINE SAFETY AND HEALTH	:	A.C. No. 15-18552-160177
ADMINISTRATION (MSHA)	:	
	:	Docket No. KENT 2009-420
v.	:	A.C. No. 15-18552-165855
	:	
ARMSTRONG COAL COMPANY	:	Docket No. KENT 2009-421
	:	A.C. No. 15-19217-165874

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 December 12, 2008, the Commission received from Armstrong Coal Company ("Armstrong") a letter seeking to reopen 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).[1]

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).

However, 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

[1] Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers KENT 2009-419, KENT 2009-420, and KENT 2009-421, all captioned *Armstrong Coal Company* and involving similar procedural issues. 29 C.F.R. § 2700.12.

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).

On August 13, 2008, the Department of Labor's Mine Safety and Health Administration ("MSHA") issued Proposed Assessment No. 000160177 for alleged violations occurring at Armstrong's Big Run Mine. On October 15, 2008, MSHA issued Proposed Assessment Nos. 000165855 and 000165874 for alleged violations occurring at Armstrong's Big Run and Midway Mines, respectively. In its letter, Armstrong asserts that it failed to contest the proposed penalty assessments because of a mistaken failure of communication between its Director of Safety and its Accounting Officer, who each believed that the other individual was sending in the contest forms. Along with its letter, Armstrong furnished evidence that it had paid proposed assessments that it did not intend to contest. The Secretary states that she does not oppose the reopening of the proposed penalty assessments.

Having reviewed Armstrong's request and the Secretary's response, in the interests of justice, we hereby reopen this matter and remand it to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700. Accordingly, consistent with Rule 28, the Secretary shall file a petition for assessment of penalty within 45 days of the date of this order. See 29 C.F.R. § 2700.28.

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Michael F. Duffy, Chairman

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Mary Lu Jordan, Commissioner

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Michael G. Young, Commissioner

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Robert F. Cohen, Jr., Commissioner

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