

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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April 17, 2009

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. KENT 2009-9
	:	A.C. No. 15-18267-157148
v.	:	
	:	
MANALAPAN MINING COMPANY	:	

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 October 7, 2008, the Commission received from Manalapan Mining Company (“Manalapan”) a letter seeking 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 July 16, 2008, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued proposed penalty Assessment No. 000157148 to Manalapan. In its letter, Manalapan asserts that it would be a great hardship for it to pay the total balance of outstanding penalty assessments shown on Assessment No. 000157148.

In response, the Secretary states that inability to pay a penalty is not a grounds for reopening and notes that another one of the unpaid assessments that constitutes Manalapan’s total outstanding balance has already been reopened pursuant to an earlier request by Manalapan. The Secretary further notes that, if the operator does not pay the revised balance, the Secretary will refer the matter to the Department of the Treasury, with whom the operator may be able to agree upon an installment payment plan.

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).

Because Manalapan’s request for relief does not explain the company’s failure to contest the proposed assessment on a timely basis, and is not based on any of the grounds for relief set forth in Rule 60(b), we hereby deny the request for relief without prejudice. *See FKZ Coal Inc.*, 29 FMSHRC 177, 178 (Apr. 2007). The words “without prejudice” mean that Manalapan may submit another request to reopen Assessment No. 000157148 so that it can contest specific citations and proposed penalties.¹

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

¹ If Manalapan submits another request to reopen, it must identify the specific citations and proposed penalties it seeks to contest from Assessment No. 000157148. Manalapan must also establish good cause for not contesting those citations and proposed penalties within 30 days from the date it received Assessment No. 000157148 from MSHA. Under Rule 60(b) of the Federal Rules of Civil Procedure, the existence of “good cause” may be shown by a number of different factors including mistake, inadvertence, surprise, or excusable neglect on the part of the party seeking relief, or the discovery of new evidence, or fraud, misrepresentation, or other misconduct by the adverse party. Manalapan should include a full description of the facts supporting its claim of “good cause,” including how the mistake or other problem prevented Manalapan from responding within the time limits provided in the Mine Act, as part of its request to reopen. Manalapan should also submit copies of supporting documents with its request to reopen.

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