

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

October 30, 2009

	:	Docket No. KENT 2010-1
	:	A.C. No. 15-18687-188524
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. KENT 2010-2
ADMINISTRATION (MSHA)	:	A.C. No. 15-18854-188526
	:	
v.	:	Docket No. KENT 2010-3
	:	A.C. No. 15-19080-188530
LIGGETT MINING, LLC	:	
	:	Docket No. KENT 2010-4
	:	A.C. No. 15-19234-188533

BEFORE: Jordan, Chairman; Duffy, 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 2, 2009, the Commission received from Liggett Mining, LLC (“Liggett”) motions to reopen four penalty assessments that may have 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).

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

¹ Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers KENT 2010-1, KENT 2010-2, KENT 2010-3, and KENT 2010-4, all captioned *Liggett Mining, LLC*, and all involving similar procedural issues. 29 C.F.R. § 2700.12.

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).

Each of the four assessments was dated June 18, 2009, and received by Liggett. According to the motions, Liggett’s representative marked each of the assessments indicating which penalties the operator was contesting and mailed the four notices separately, on June 27, 2009, using certified mail. According to copies of the on-line records of delivery submitted by Liggett with its motions, the four envelopes were received by the Department of Labor’s Mine Safety and Health Administration two days later. Nevertheless, Liggett received delinquency notices for the assessments dated September 10, 2009, which caused it to promptly file its motions to reopen.

The Secretary of Labor states that, while she has no record of receiving the notices of contest, given the information provided by Liggett, she will accept the copies of the notices of contest included with Liggett’s motions. The Secretary states in her letters dated October 9, 2009, that she will file penalty petitions within 45 days of that date.

Having reviewed Liggett's motions and the Secretary's responses, we find the requests to reopen to be moot. These cases shall proceed pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700, and, per her statements, the Secretary's penalty petitions shall be filed no later than November 23, 2009.

Mary Lu Jordan, Chairman

Michael F. Duffy, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

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