

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW
SUITE 9500
WASHINGTON, DC 20001

July 31, 2009

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

MICHAEL WILL, employed by
CHEMICAL LIME CO. OF ALABAMA

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Docket No. SE 2009-550-M
A.C. No. 01-00003-175599A

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 May 14, 2009, the Commission received from Michael Will, employed by Chemical Lime Company of Alabama (“Will”), a motion by counsel in which Will seeks to reopen a penalty assessment under section 110(c) of the Mine Act, 30 U.S.C. § 820(c), that had become final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

Under the Commission’s Procedural Rules, an individual charged under section 110(c) has 30 days following receipt of the proposed penalty assessment within which to notify the Secretary of Labor that he or she wishes to contest the penalty. 29 C.F.R. § 2700.26. If the individual fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 29 C.F.R. § 2700.27.

Will states that he never received Proposed Assessment No. 000175599A. The Secretary confirms that the proposed assessment was never received by Will and was returned to MSHA as undelivered. The Secretary submits that in order to achieve proper service, she will mail the proposed assessment to the address provided in Will’s request to reopen, and that Will, thereafter, will have 30 days after receipt to either pay or contest the proposed assessment.

Having reviewed Will's request and the Secretary's response, we deny Will's request to reopen as moot. The Secretary may proceed as she has outlined in her response, and, if the proposed penalty is contested by Will, this case shall proceed pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700. *See Lehigh Cement Co.*, 28 FMSHRC 440, 441 (July 2006).

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

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