

Knox Creek states that it returned the assessment form to MSHA with the citations that it desired to contest noted on the form. Shortly after Knox Creek received a delinquency letter from MSHA, it submitted its request to reopen to the Commission.

The Secretary does not oppose reopening the proposed penalty assessment but states that there is no record of the penalty contest form having been received by MSHA's Civil Penalty Compliance Office. The Secretary acknowledges receiving payment in this penalty assessment in an amount which, when subtracted from the total proposed assessment, leaves a balance which is the amount of money that Knox Creek claims to have contested.

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

Mary Lu Jordan, Chairman

Michael F. Duffy, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

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