

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

October 30, 2009

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEVA 2009-1592
v.	:	A.C. No. 46-07908-179891
	:	
PINE RIDGE COAL COMPANY, LLC	:	

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 September 9, 2009, the Commission received from Pine Ridge Coal Company, LLC (“Pine Ridge”) a renewed motion by counsel 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).

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 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).

On March 19, 2009, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued Proposed Assessment No. 000179891 to Pine Ridge for 22 citations MSHA had issued to the operator over the previous two months. However, the operator did not file a timely notice of contest. In its first motion to reopen, filed on June 22, 2009, Pine Ridge stated that it had intended to contest 12 of the proposed penalties, but because of a “clerical error” it failed to return the contest form to MSHA. The Secretary of Labor opposed reopening on the ground that the proffered ground for reopening did not rise to the level of exceptional circumstances. The Commission subsequently denied the request to reopen without prejudice because of Pine Ridge’s failure to provide a sufficiently detailed explanation for its failure to file a timely contest. *See Pine Ridge Coal Co.*, 31 FMSHRC \_\_\_, slip op. at 2, Docket No. WEVA 2009-1592 (Aug. 26, 2009).

The renewed request to reopen from Pine Ridge includes an affidavit from its safety manager, who explains that the assessment was not processed as it normally would have been because it was misfiled in a stack of documents on his desk after he had marked it to indicate which penalties he wished to contest. The Secretary has not responded to Pine Ridge’s renewed motion.

Having reviewed Pine Ridge’s requests, 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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Mary Lu Jordan, Chairman

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Michael F. Duffy, Commissioner

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Michael G. Young, Commissioner

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Robert F. Cohen, Jr., Commissioner

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