

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

March 5, 2010

SECRETARY OF LABOR,	:	Docket No. WEVA 2009-688
MINE SAFETY AND HEALTH	:	A.C. No. 46-08693-164121
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. WEVA 2009-689
	:	A.C. No. 46-08693-167069
	:	
HIGHLAND MINING COMPANY	:	Docket No. WEVA 2009-1037
	:	A.C. No. 46-06558-169988

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”). During the course of over five months in 2008 and 2009, the Commission received from Highland Mining Company (“Highland”) motions by counsel to reopen four penalty assessments that had each become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).¹ In *Highland Mining Co.*, 31 FMSHRC 1313 (Nov. 2009), the Commission unanimously denied the first of the motions with prejudice, and a majority denied the remaining three motions without prejudice. That order stated that with respect to the three motions denied without prejudice:

Should Highland renew its reopening requests, it must do so within 30 days, and fully explain the circumstances in the three failures to timely contest the proposed assessments. It must also address what it has done to ensure that it does not misplace penalty assessments in the future and to ensure that it responds to them in a more timely

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).

manner, in order to avoid a repeat of the mistakes it outlined in its four motions.

Id. at 1316.

In a motion filed on February 3, 2010, counsel for Highland informed the Commission that he did not receive his service copy of the Commission's decision, and consequently did not learn of the decision until nearly two months later. Highland requests "a reasonable extension of time to consider and renew its reopening requests" in the three dockets in which the Commission indicated that it would entertain renewed requests to reopen. The Secretary of Labor has not filed a response to Highland's February 3 motion.

Having considered Highland's motion, we grant its request for an extension of time. It shall have 20 days from the date of this order in which to file renewed requests to reopen in the three dockets.

Mary Lu Jordan, Chairman

Michael F. Duffy, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

Distribution:

W. Christian Schumann, Esq.
Office of the Solicitor
U.S. Department of Labor
1100 Wilson Blvd., Room 2220
Arlington, VA 22209-2296

Max L. Corley, III, Esq.
Dinsmore & Shohl, LLP
P. O. Box 11887
900 Lee Street, Suite 600
Charleston, WV 25339

Myra James, Chief
Office of Civil Penalty Compliance
MSHA
U.S. Department Of Labor
1100 Wilson Blvd., 25th Floor
Arlington, VA 22209-3939

Chief Administrative Law Judge Robert J. Lesnick
Federal Mine Safety & Health Review Commission
601 New Jersey Avenue, N.W., Suite 9500
Washington, D.C. 20001-2021