FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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October 22, 2010

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)	: : :	
v.	:	Docket No. WEVA 2010-267
	:	A.C. No. 46-08801-189657
ARACOMA COAL COMPANY, INC.	:	

BEFORE: Jordan, Chairman; Duffy, Young, Cohen, and Nakamura, 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 November 25, 2009, the Commission received from Aracoma Coal Company, Inc. ("Aracoma") a motion seeking 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 June 30, 2009, the Department of Labor's Mine Safety and Health Administration ("MSHA") issued Proposed Assessment No. 000189657 to Aracoma. Aracoma states that it had recently changed its procedure for processing proposed assessments, bringing the function in-house. It states that it received and processed the assessment according to this new procedure and on July 24, 2009, placed the marked-up assessment for contest in its internal mail dropoff location for pickup to be brought to the local U.S. post office. Aracoma contends that it learned that the assessment was delinquent when it received MSHA's delinquency notice dated September 24, 2009. Aracoma speculates that a delay in mail pickup must have occurred, resulting in the assessment being mailed on the next business day, which was July 27, 2009.

The Secretary opposes Aracoma's request to reopen. She states that Aracoma's inadequate and unreliable internal office procedures do not constitute grounds for relief under Rule 60(b). She notes that the contested assessment was postmarked September 2, 2009, contrary to Aracoma's contention that the mailing of the assessment was delayed by a few days.

Given the unexplained time gap between Aracoma's internal processing of the assessment and the date the assessment was actually mailed, we cannot conclude that its failure to timely contest this assessment amounts to mistake or inadvertence warranting relief. Moreover, even after the Secretary's identification of Aracoma's erroneous assumption, Aracoma provided no explanation for the one-month time delay in mailing the assessment. In addition, given the amount of the penalty assessment at stake, over $200,000, we conclude that Aracoma's delay in filing a request to reopen two months after its discovery of the delinquency was too long under the circumstances.

Based on the foregoing, we conclude that Aracoma has failed to provide an adequate basis for the Commission to reopen the penalty assessment. *See Pinnacle Mining Co.*, 30 FMSHRC 1061, 1062-63 (Dec. 2008) (denying relief because operator's excuse was insufficient); *Pinnacle Mining Co.*, 30 FMSHRC 1066, 1067-68 (Dec. 2008) (same). Accordingly, we deny Aracoma's request to reopen.

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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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Patrick K. Nakamura, Commissioner

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