

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

May 19, 2004

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. CENT 2002-242-M
v.	:	A.C. No. 41-03882-05515
	:	
ARNOLD CRUSHED STONE	:	

BEFORE: Duffy, Chairman; Beatty, Jordan, Suboleski, and Young, 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. (1994) (“Mine Act”). On January 17, 2003, the Commission received from Arnold Crushed Stone (“Arnold”) correspondence which we construe as a request 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).

On December 21, 2001, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued a proposed penalty assessment (A.C. No. 41-03882-05515) to Arnold’s mine in Blum, Texas. The record indicates that Arnold failed to timely submit a request for hearing to contest the proposed penalty assessment for the three citations in question. Pursuant to section 105(a) of the Mine Act, the penalty proposal became a final order of the Commission thirty days after Arnold received it. On May 24, 2002, the Commission received from Arnold correspondence which it construed as a request to reopen the final order. That request did not explain the basis for reopening the matter. On July 10, 2002, the Commission issued an order remanding the matter to an administrative law judge to determine whether

Arnold had met the criteria for obtaining relief from a final section 105(a) order. 24 FMSHRC 635.

On July 18, 2002, Chief Administrative Law Judge David Barbour issued an order directing Arnold to submit information within 20 days providing “a thorough explanation of why it failed to timely file the notice of contest.” On October 24, 2002, the judge issued a show cause order directing Arnold to submit information within 20 days explaining its failure to timely file a notice of contest or to show cause for its failure to submit the information. The order provided that if Arnold failed to comply with the order, “the penalty assessment will *not* be reopened and *Arnold will be required to pay the proposed penalty assessment in full*” (emphasis in original). Arnold did not respond to either of these two orders.

On December 12, 2002, the judge issued a second show cause order which was similar to the prior order. On December 19, 2002, Arnold faxed to the Commission’s docket office three letters which briefly disputed the substantive basis for each of the three citations involved. Mot., Attachment. None of the three letters addressed the show cause orders or otherwise explained why Arnold had failed to timely file a notice of contest regarding the proposed penalty assessment.

On December 24, 2002, the judge issued an order which (1) denied Arnold’s May 24, 2002, request to reopen the penalty assessment, (2) ordered Arnold to pay the penalty assessment of \$3,412 within 30 days, and (3) dismissed the case. 24 FMSHRC 1070. The order stated that the record showed Arnold had received the three orders that had previously been issued and that the letters faxed by Arnold did not respond to the show cause orders’ requirement that Arnold explain why it did not timely file a notice of contest.

On January 17, 2003, the Commission received a letter from Mike Arnold, company president, dated January 14, 2003, in which the company requested that the Commission reopen this matter. Mot. The company stated that after receiving the original citations in this matter it had contacted an individual in the regional office of the Secretary and requested a conference. *Id.* The company further stated that it understood that the regional office would take some action to address the citations in question. *Id.* According to the letter, the company did not receive anything further until it received the order of December 24, 2002, denying its request to reopen. *Id.* The letter provided no explanation of why Arnold had not initially filed a notice of contest concerning the proposed penalty assessment, why Arnold had not responded to the judge’s order to provide additional information, or why Arnold had not responded to the judge’s two show cause orders, notwithstanding clear record evidence that Arnold had received all the orders.

Having reviewed Arnold’s most recent request and the record in this matter, we hereby deny the request for relief from the final order of December 24, 2002. By its order of July 10, 2002, the Commission remanded the matter to an administrative law judge so that Arnold would have the opportunity to explain why this matter should be reopened. It was incumbent upon Arnold to comply with the judge’s subsequent, clearly worded orders and to provide a

justification for reopening. However, Arnold made no attempt to comply with the judge's orders or to otherwise explain in a timely fashion why it believed that it was unnecessary to do so. We therefore conclude that there is no basis for reopening the judge's December 24, 2002, final order dismissing this case.

Michael F. Duffy, Chairman

Robert H. Beatty, Jr., Commissioner

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

Distribution

Mike Arnold
Arnold Crushed Stone
P.O. Box 632
Blum, TX 76627

W. Christian Schumann, Esq.
Office of the Solicitor
U.S. Department of Labor
1100 Wilson Blvd., 22nd Floor West
Arlington, VA 22209-2247

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