FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

March 29, 2004

SECRETARY OF LABOR, :

MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

: Docket No. CENT 2003-187-M

v. : A.C. No. 03-01743-05507

:

VAN BUREN COUNTY : ROAD DEPARTMENT :

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 March 24, 2003, the Commission received from Van Buren County Road Department ("Van Buren") a request made by the County Judge of Van Buren County, Arkansas, 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 6, 2002, the Department of Labor's Mine Safety and Health Administration ("MSHA") issued a proposed penalty assessment (A.C. No. 03-01743-05507) to Van Buren for alleged violations at the Van Buren County Crusher site. In his request, the County Judge for Van Buren states that he entered the office of County Judge on January 1, 2003, and that the assessment originated from orders/citations issued in July 2002. Mot. The County Judge further states that he believed that the orders/citations were taken care of by the prior administration but has since learned that the assessment was neither paid nor handled by the prior administration.

Id. The Secretary states that she does not oppose Van Buren's request for relief.

We have held 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 inadvertence or mistake. *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 to a penalty petition, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

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

Michael F. Duffy, Chairman
Robert H. Beatty, Jr., Commissioner
Mary Lu Jordan, Commissioner
Stanley C. Suboleski, Commissioner
Michael G. Voung Commissioner
Michael G. Young, Commissioner

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