

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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August 9, 2005

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. CENT 2005-185-M
	:	A.C. No. 34-00282-47934
v.	:	
	:	
O/N MINERALS (ST. CLAIR) CO.	:	Docket No. CENT 2005-186-M
	:	A.C. No. 34-00282-52828

BEFORE: Duffy, Chairman; 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. (2000) (“Mine Act”).¹ On June 8, 2005, the Commission received from O/N Minerals (St. Clair) Company (“O/N Minerals”) motions made by counsel to reopen two penalty assessments that had become final orders 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 January 13 and March 17, 2005, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued two proposed assessments to O/N Minerals. Mot. at Ex. A-B. In its motions, O/N Minerals states that the employee responsible for processing proposed penalty assessments for the company was “unaware of the proper contest procedures.” Mot. at

¹ Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers CENT 2005-185-M and CENT 2005-186-M, both captioned *O/N Minerals (St. Clair) Company* and both involving similar issues. 29 C.F.R. § 2700.12.

Aff. The employee believed that the proposed assessments at issue did not reflect modifications agreed to in a conference with MSHA on the citations and orders listed, and assumed MSHA would reissue or revise the proposed assessments based on the modifications. *Id.* The employee thus did not file requests for hearing for either of the proposed assessments. *Id.*

O/N Minerals further states that “it was always our intent to contest these proposed penalties.” *Id.* The company requests to be excused from its failure to timely request a hearing, which it claims was due to its mistake and inadvertence. Mot. at 1. The Secretary states that she does not oppose O/N Minerals’ requests 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, 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 O/N Minerals' motions, in the interests of justice, we remand these matters to the Chief Administrative Law Judge for a determination of whether good cause exists for O/N Minerals' failure to timely contest the penalty proposals and whether relief from the final orders should be granted. If it is determined that such relief is appropriate, these cases shall proceed pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

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