

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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August 11, 2005

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. CENT 2005-223-M
ADMINISTRATION (MSHA)	:	A.C. No. 13-00733-46541
	:	
v.	:	Docket No. CENT 2005-224-M
	:	A.C. No. 13-00733-41258
NORTHERN GRAVEL COMPANY, INC.	:	

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 July 19, 2005, the Commission received from Northern Gravel Company, Inc. (“Northern Gravel”) 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).

In its motions, Northern Gravel states that during August 2004, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued to the company several citations and orders. Mot. at 2. Northern Gravel further states that when penalties were proposed for the citations and orders, the company was not represented by counsel and it failed to contest the penalties because it was not familiar with the procedures for contesting penalties under the

¹ Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers CENT 2005-223-M and CENT 2005-224-M, both captioned *Northern Gravel Company, Inc.* and both involving similar issues. 29 C.F.R. § 2700.12.

Mine Act and the Commission's Procedural Rules. *Id.* The Secretary states that she does not oppose Northern Gravel's 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 Northern Gravel's 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 Northern Gravel's 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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