

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW

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WASHINGTON, DC 20001

December 14, 2005

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. CENT 2005-262-M
	:	A.C. No. 41-02810-60764
v.	:	
	:	
CAPITOL AGGREGATES, LTD.	:	

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”). On September 21, 2005, the Commission received from Capitol Aggregates, LTD (“Capitol Aggregates”) a motion made by counsel 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).

On March 8, 2005, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued Citation No. 6256167 to Capitol Aggregates’ Fairland Quarry. Mot. at 2. The company timely contested the citation. The contest proceeding is currently on stay before Commission Administrative Law Judge David Barbour. *Id.* at 3 (citing Docket No. CENT 2005-171-RM). When MSHA subsequently proposed a penalty for Citation No. 6256167, Capitol Aggregates paid it. Mot. at 4. The company now contends that it made the payment inadvertently, and asserts that it had always intended to contest the validity of the citation. *Id.*; Aff. of Don Patrick. The Secretary states that she does not oppose Capitol Aggregates’ 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.

Having reviewed Capitol Aggregates’ 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 Capitol Aggregates’ inadvertent payment, 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.

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Michael F. Duffy, Chairman

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Mary Lu Jordan, Commissioner

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Stanley C. Suboleski, Commissioner

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Michael G. Young, Commissioner

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