

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

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WASHINGTON, DC 20001

March 24, 2006

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. CENT 2006-102-M
v.	:	A.C. No. 16-00357-70579A
	:	
CHAD BROUSSARD, Employed by	:	
NORTH AMERICAN SALT COMPANY	:	

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 March 7, 2006, the Commission received a motion made by counsel on behalf of Chad Broussard, employed by North American Salt Company, to reopen a penalty assessment against Broussard under section 110(c) of the Mine Act, 30 U.S.C. § 820(c), that had become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a). Counsel filed an amended motion on March 8, 2006.

Under the Commission’s Procedural Rules, an individual charged under section 110(c) has 30 days following receipt of the proposed penalty assessment within which to notify the Secretary of Labor that he or she wishes to contest the penalty. 29 C.F.R. § 2700.26. If the individual fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 29 C.F.R. § 2700.27.

On October 28, 2005, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) mailed a proposed penalty assessment to Broussard alleging that he was personally liable under section 110(c) of the Mine Act for two citations (Nos. 6229860 and 6209573) and one order (No. 6229861) issued to his employer, North American Salt Company. Am. Mot. at 2 and Ex A. The citations and order issued to North American Salt Company are the subject of consolidated proceedings before Commission Administrative Law Judge Avram Weisberger. Docket Nos. CENT 2005-97-RM, CENT 2005-98-RM, and CENT 2005-67-M. These

proceedings had been (and currently are) stayed pending the conclusion of the Secretary's related section 110(c) investigation. Although Broussard states that he intended to contest the Secretary's proposed penalties, Am. Mot. at 5, "due to a miscommunication and a filing error or mistake," no contest was filed, *id.* at 3. The Secretary does not oppose Broussard'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, 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 Broussard's request, in the interests of justice, we remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists for Broussard'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

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

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