

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

August 2, 2006

SECRETARY OF LABOR,	:	Docket No. CENT 2006-200-M
MINE SAFETY AND HEALTH	:	A.C. No. 14-01635-74774
ADMINISTRATION (MSHA)	:	Docket No. CENT 2006-201-M
	:	A.C. No. 14-01635-80401
v.	:	Docket No. CENT 2006-202-M
	:	A.C. No. 14-01477-80283
NELSON QUARRIES, INC.	:	Docket No. CENT 2006-203-M
	:	A.C. No. 14-01478-77337
	:	Docket No. CENT 2006-204-M
	:	A.C. No. 14-01478-82614
	:	Docket No. CENT 2006-205-M
	:	A.C. No. 14-01597-77364
	:	Docket No. CENT 2006-206-M
	:	A.C. No. 14-01597-80316
	:	Docket No. CENT 2006-207-M
	:	A.C. No. 14-01277-74668
	:	Docket No. CENT 2006-208-M
	:	A.C. No. 14-01277-82615
	:	Docket No. CENT 2006-209-M
	:	A.C. No. 14-01277-80289

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 14, 2006, the Commission received from Nelson

¹ Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers CENT 2006-200-M, CENT 2006-201-M, CENT 2006-202-M, CENT 2006-203-M, CENT 2006-204-M, CENT 2006-205-M, CENT 2006-206-M, CENT 2006-207-M, CENT 2006-208-M, and CENT 2006-209-M, all captioned *Nelson Quarries, Inc.* and all involving similar procedural issues. 29 C.F.R. § 2700.12.

Quarries, Inc. (“Nelson Quarries”) a letter requesting that the Commission reopen ten 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 late 2005 and early 2006, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) sent to Nelson Quarries the proposed penalty assessments at issue. Nelson Quarries asserts that it contacted MSHA and understood that it was not to pay the assessments pending review of the citations. In response, the Secretary states that MSHA indicated that the company did not need to pay assessments related to other pending citations but did need to pay the assessments in this proceeding. However, the Secretary concludes that, in light of the company’s confusion over whether it should pay, she does not oppose Nelson Quarries’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 Nelson Quarries's requests, in the interests of justice, we remand these matters to the Chief Administrative Law Judge for a determination of whether good cause exists for Nelson Quarries'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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