FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW
SUITE 9500
WASHINGTON, DC 20001

April 10, 2006

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)	:	
	:	Docket No. CENT 2006-95-M
v.	:	A.C. No. 13-02285-67945
JEPPESEN GRAVEL	:	

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"). In a letter to the Commission dated February 14, 2006, Jeppesen Gravel requested that the Commission 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 24, 2006, the Secretary of Labor filed with the Commission an opposition to Jeppesen Gravel's request.

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 May 19, 2004, the Department of Labor's Mine Safety and Health Administration ("MSHA") issued Citation No. 7845177 to Jeppesen Gravel alleging that the company "refused to allow an authorized representative [of the Secretary] to enter the [company's] mine." S. Opp. at 2 and Attach. 1 & 4. In its letter, Jeppesen Gravel acknowledges that it refused to allow MSHA inspectors onto its mine site. Jeppesen Letter at 2. On August 18, 2004, MSHA applied to the United States District Court for the Northern District of Iowa for injunctive relief to obtain access to the Jeppesen Gravel mine site. S. Opp. at 2 and Attach. 2 & 3. Soon thereafter, the court issued an injunction enjoining Jeppesen Gravel from interfering with MSHA inspecting the mine. *Id*.

On September 26, 2005, MSHA issued to Jeppesen Gravel a proposed penalty assessment for Citation No. 7845177. S. Opp. at 3. On October 3, 2005, Jeppesen Gravel refused to accept delivery of the proposed assessment. S. Opp. at 3 and Attach. 5; *see also* Jeppesen Letter at 3 ("Anything that came to our house through the mail from MSHA we would refuse and return."). The assessment became a final Commission order on November 2, 2005. *See* 30 U.S.C. § 815(a) ("If, within 30 days from the receipt of the notification issued by the Secretary, the operator fails to notify the Secretary that he intends to contest . . . the proposed assessment of penalty . . . [it] shall be deemed a final order of the Commission. . . . Refusal by the operator or his agent to accept certified mail containing a citation and proposed assessment of penalty under this subsection shall constitute receipt thereof within the meaning of this subsection."). The company now requests that this matter be reopened because "February 13, 2006 is the very first time we laid eyes on this citation. We had no idea it even existed." Jeppesen Letter at 1. In opposing Jeppesen Gravel's request for relief, the Secretary argues that the company "has failed to establish adequate cause why [the] final penalty assessment should be reopened." S. Opp. at 9.

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. However, courts have long held that "deliberate or willful conduct on the part of the person seeking relief from the judgment precludes, by its very nature, a finding of 'mistake' or 'inadvertence.'" 12 James Wm. Moore et al., *Moore's Federal Practice* § 60.41[1][c] (3d ed. 1997). Thus, "[t]o obtain relief under the Rule [60(b)(1)], a party must demonstrate *inter alia* that he was not at fault." *Home Port Rentals, Inc. v. Ruben*, 957 F.2d 126, 132 (4th Cir. 1992), *cert. denied*, 506 U.S. 821 (1992). *Cf. Munn Road Sand & Gravel*, 26 FMSHRC 383, 384 (May 2004) ("a party which refuses to accept certified mail from MSHA will most likely be unable to establish good cause" to reopen a proposed penalty assessment that has become a final Commission order).

Jeppesen Gravel was unaware of Citation No. 7845177 and the penalty proposed for the citation only because of the undisputed fact that the company refused to accept delivery of them. This deliberate and willful conduct bars any relief under Rule 60(b)(1). Accordingly, Jeppesen Gravel's request for relief is denied.

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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

Distribution

Mrs. Jay Jeppesen
Jeppesen Gravel
719 8th Street
Sibley, IA 51249

Jerald S. Feingold, Esq.
Office of the Solicitor
U.S. Department of Labor
1100 Wilson Blvd., 22nd Floor West
Arlington, VA 22209-2247