

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

December 14, 2007

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. CENT 2008-40
	:	A.C. No. 29-00096-121569
v.	:	
	:	
CHEVRON MINING, INC.	:	

BEFORE: Duffy, Chairman; Jordan 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 November 7, 2007, the Commission received from Chevron Mining, Inc. (“Chevron”) a motion seeking 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).

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 March 29, 2007, following an inspection, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued a citation and order which Chevron challenged by filing a notice of contest on April 26. On July 10, 2007, MSHA issued proposed penalty assessments for the citation and order. In its motion, Chevron states that its safety manager mistakenly thought that, because Chevron had contested the citation and order, it did not need to contest the proposed penalties. Chevron further states that due to its safety manager’s mistake, it did not

timely process the assessment form. On October 26, Chevron was notified of its delinquency in paying the proposed penalties, and it filed this motion. In response, the Secretary states that she does not oppose Chevron's request to reopen the proposed penalty assessment proceeding.¹

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 Chevron'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 Chevron'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

Michael G. Young, Commissioner

¹ The Secretary states that the contest proceedings involving the underlying citation and order were docketed as CENT 2007-189-R and 2007-190-R.

Distribution:

David M. Arnold, Esq.
Chevron Mining, Inc.
116 Inverness Drive East, Suite 207
Englewood, CO 80112

W. Christian Schumann, Esq.
Office of the Solicitor
U. S. Department of Labor
1100 Wilson Boulevard, Room 2220
Arlington, VA 22209-2296

Myra James, Chief
Office of Civil Penalty Compliance, MSHA
U. S. Department of Labor
1100 Wilson Boulevard, 25th Floor
Arlington, VA 22209-3939

Chief Administrative Law Judge Robert J. Lesnick
Federal Mine Safety and Health Review Commission
601 New Jersey Avenue, N. W., Suite 9500
Washington, D. C. 20001