FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR

WASHINGTON, D.C. 20006

May 10, 2002

RONALD HARRISON	:	
	:	
v.	:	Docket No. CENT 2000-88-DM
	:	
SIDCO MINERALS	:	

BEFORE: Verheggen, Chairman; Jordan and Beatty, Commissioners

ORDER

BY: THE COMMISSION

This matter arose under section 105(c)(3) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 815(c)(3), when Ronald Harrison filed a discrimination complaint against Sidco Minerals on December 6, 1999. Over six months later, Chief Administrative Law Judge David F. Barbour dismissed Harrison's complaint after Harrison failed to respond to two show cause orders directing him to file with the judge a copy or restatement of his original discrimination complaint. Order of Default (June 22, 2000). On July 20, 2001, Harrison filed with the Commission a request to vacate the judge's default order. Sidco Minerals opposes Harrison's request for relief. SM Mot. (Aug. 9, 2001).

In his request, Harrison, apparently proceeding pro se, asserts that he never received any requests from the judge to which he did not respond. H. Mot. at 4. Thus, we assume Harrison is contending that he either did not receive a copy of the second show cause order or that he responded to the order but the Commission did not receive his response. We note, however, that the record contains the certified mail receipt for the judge's second show cause order issued on May 5, 2000, indicating that it was received and signed for by Harrison on May 9, 2000. In addition, Harrison provides no explanation for the late filing of his request for relief from the default order. The remainder of his request goes to the merits of the discrimination case.

The judge's jurisdiction in this matter terminated when his default order was issued on June 22, 2000. 29 C.F.R. § 2700.69(b). Relief from a judge's order may be sought by filing a

petition for discretionary review within 30 days of its issuance. 29 C.F.R. § 2700.70(a). If the Commission does not direct review within 40 days of a decision's issuance, it becomes a final decision of the Commission. 30 U.S.C. § 823(d)(1). The Commission received Harrison's request on July 20, 2001, almost a year after the judge's default order had become a final decision of the Commission.

When considering whether relief from a final Commission order is appropriate, we have found guidance in, and have applied "so far as practicable," Fed. R. Civ. P. 60(b).[1] *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"); *Jim Walter Res., Inc.*, 15 FMSHRC 782, 787 (May 1993). In accordance with Rule 60(b)(1), the Commission previously has afforded a party relief from a final order of the Commission on the basis of "inadvertence" or "mistake." *See Kinross DeLamar Mining Co.,* 18 FMSHRC 1590- 1590-92 (Sept. 1996). A Rule 60(b) motion "shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken." Fed. R. Civ. P. 60(b). This one-year time limit is an outside time limit for motions requesting relief under subsections (1) through (3). *Id.*; *Lakeview Rock Prods., Inc.*, 19 FMSHRC 26, 28 (Jan. 1997) (holding that requests for relief under Rule 60(b)(1) must be made within one year of entry of order); *see* 12 James Wm. Moore, et al., Moore's Federal Practice ¶ 60.65[2][a] (3d ed. 1997).

Harrison does not explicitly assert in his request that he is entitled to relief under Rule 60(b). However, we construe the basis of his request — that he either did not receive the second show cause order or responded to it and his response was not received by the Commission — as falling squarely within the coverage of the "inadvertence" or "mistake" provisions of Rule 60(b)(1). We therefore conclude that Harrison's request is not entitled to relief under Rule 60(b)(1) because it was filed over a year after the default order was issued. *See Newball v.*

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[1] Rule 60(b) states, in pertinent part:

> [T]he court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Fed. R. Civ. P. 60(b).

Offshore Logistics Int'l, 803 F.2d 821, 827 (5th Cir. 1986) (holding that one-year time limit under Rule 60 (b) begins to run from date order is issued). Furthermore, Harrison provides no explanation in his request why he failed to file a timely petition for discretionary review after the default order was issued. *See Haro v. Magma Copper Co.*, 5 FMSHRC 9, 9-11 (Jan. 1983) (denying request to reopen final Commission decision where request failed to adequately explain its late filing).

Accordingly, we deny Harrison's request for relief under Rule 60(b).

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Theodore F. Verheggen, Chairman

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Mary Lu Jordan, Commissioner

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Robert H. Beatty, Jr., Commissioner

Distribution

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