FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

May 7, 2002

SECRETARY OF LABOR,	:		CENT 2002-159-M
MINE SAFETY AND HEALTH	:		A.C. No. 23-00454-05592
ADMINISTRATION (MSHA)	:		
	:		CENT 2002-160-M
	:		A.C. No. 23-00454-05593
	:		
v.	:	Docket Nos.	CENT 2002-161-M
	:		A.C. No. 23-00454-05594
	:		
	:		CENT 2002-162-M
	:		A.C. No. 23-00454-05595
	:		
	:		CENT 2002-163-M
PEA RIDGE IRON ORE COMPANY	:		A.C. No. 23-00454-05596

BEFORE: Verheggen, Chairman; Jordan and Beatty, Commissioners

ORDER

BY: Jordan and Beatty, Commissioners

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994) ("Mine Act"). On April 1, 2002, the Commission received from Pea Ridge Iron Ore Co. ("Pea Ridge") two requests to reopen five 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 has 30 days following receipt of the Secretary of Labor's proposed penalty assessment within which to notify the Secretary that it wishes to contest the proposed penalty. 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 its first request, Pea Ridge seeks relief for four proposed penalty assessments (A.C. Nos. 23-00454-05592 through 05595) totaling $8,854 for 67 alleged violations. Mot. dated March 29, 2002 ("Mot. I"). In its second request, it seeks to reopen one proposed assessment (A.C. No. 23-00454-05596) totaling $297 for two alleged violations. Mot. dated March 30, 2002 ("Mot. II"). In both requests, Dwight A. Miller, Pea Ridge's executive vice president and general counsel, asserts that, due to internal mismanagement, Pea Ridge failed to timely submit a request for a hearing on the proposed penalty assessments to the Department of Labor's Mine Safety and Health Administration ("MSHA"). Mots. I & II. Miller contends that Pea Ridge ceased all mining operations and began liquidating its assets in August, 2001. *Id*. He asserts that all but two employees involved in the liquidation have been terminated. *Id*. Miller explains that "[a]s a result of the administrative turmoil resulting from the cessation of operations and employee terminations, the deadline for contesting 4 cases were inadvertently missed" for A.C. Nos. 23-00454-05592 through 05595. Mot. I.

We have held that, in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) ("*JWR*"); *Rocky Hollow Coal Co.*, 16 FMSHRC 1931, 1932 (Sept. 1994). We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of adequate or good cause for the 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). In reopening final orders, the Commission has found guidance in, and has applied "so far as practicable," Fed. R. Civ. P. 60(b). *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. In accordance with Rule 60(b)(1), we previously have afforded a party relief from a final order of the Commission on the basis of inadvertence or mistake. *See Gen. Chem. Corp.,* 18 FMSHRC 704, 705 (May 1996); *Kinross DeLamar Mining Co.*, 18 FMSHRC 1590, 1591-92 (Sept. 1996); *Stillwater Mining Co.*, 19 FMSHRC 1021, 1022-23 (June 1997). However, where an operator has failed to timely submit a hearing request due to internal mishandling, the Commission has remanded the matter to a judge for further consideration. *See, e.g.*, *Georges Colliers, Inc.*, 22 FMSHRC 939, 939-41 (Aug. 2000) (remanding to judge where operator misfiled proposed penalty assessment due to changes in office personnel); *E. Ark. Contractors, Inc.*, 21 FMSHRC 981, 981-83 (Sept. 1999) (same).

Pea Ridge alleges that it failed to timely request a hearing because of the cessation of mining operations and termination of its employees. We note that Pea Ridge recently made a similar request to reopen a proposed assessment claiming that it failed to timely file a hearing request due to personnel lay-offs. *Pea Ridge Iron Ore Co.,* 24 FMSHRC 4, 4-5 (Jan. 2002) ("*Pea Ridge I*"). In *Pea Ridge I*, we remanded the matter to a judge to determine whether relief was warranted. *Id.* Here, the operator received the five proposed penalty assessments between approximately December 21, 2001 and February 15, 2002, which overlaps our decision in *Pea Ridge I*. Because the operator is requesting relief on the same basis it submitted its prior request to reopen nearly five months ago, and consistent with our decision in *Pea Ridge I*, we remand the matter for assignment to a judge to determine whether relief from the final order is appropriate.

If the judge determines 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.

Mary Lu Jordan, Commissioner

Robert H. Beatty, Jr., Commissioner

Chairman Verheggen, dissenting:

Consistent with my dissent in *Pea Ridge Iron Ore Co.*, 24 FMSHRC 4, 6 (Jan. 2002), I would grant Pea Ridge's request for relief. The Secretary does not oppose the operator's request. Nor do I find any other circumstances that would render a grant of relief here problematic. Under these circumstances, I thus fail to see the need or utility for remanding this matter.

Theodore F. Verheggen, Chairman

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