

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

January 17, 2002

SECRETARY OF LABOR, :  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA) :  
 :  
v. : Docket No. CENT 2002-23-M  
 : A.C. No. 23-00454-05587  
 :  
PEA RIDGE IRON ORE COMPANY :

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 November 5, 2001, the Commission received from Pea Ridge Iron Ore Co. (“Pea Ridge”) a request 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 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 request, Dwight A. Miller, Pea Ridge’s executive vice president and general counsel, asserts that, due to personnel lay-offs at the time Pea Ridge received the proposed penalty assessment, it failed to timely submit a request for a hearing on the proposed penalty assessment to the Department of Labor’s Mine Safety and Health Administration (“MSHA”). Mot. A copy of the proposed penalty assessment and the delinquency letter from MSHA were attached to its request. It also attached an unsigned statement by T.D. Gallagher that Pea Ridge ceased mining on August 27, 2001, and has laid off many of its employees. Gallagher Statement

dated Sept. 25, 2001. The statement also requests that the penalties be dropped because Pea Ridge's secured lender has frozen its assets and it cannot pay its outstanding bills. *Id.* There is no indication in the statement or other record documents what connection Gallagher has to Pea Ridge.

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).

On the basis of the present record, we are unable to evaluate the merits of Pea Ridge's position. In the interest of justice, we remand the matter for assignment to a judge to determine whether relief from the final order is appropriate. *See 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). 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.

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Mary Lu Jordan, Commissioner

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Robert H. Beatty, Jr., Commissioner

Chairman Verheggen, dissenting:

I would grant Pea Ridge's request for relief. First, I note that the Secretary does not oppose the operator's motion. 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.

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Theodore F. Verheggen, Chairman

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