

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

April 30, 1998

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

CYPRUS EMERALD
RESOURCES CORPORATION

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Docket No. PENN 94-50

BEFORE: Jordan, Chairman; Marks, Riley, Verheggen, and Beatty, Commissioners

ORDER

BY: Jordan, Chairman; Riley and Verheggen, Commissioners

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 801 et seq. (1994) (AMine Act@). On March 16, 1998, Cyprus Emerald Resources Corporation (ACyprus Emerald@) and the Secretary of Labor filed with the Commission a Joint Motion for Relief from Final Judgment. For the reasons discussed below, we deny the parties= motion.

On April 26, 1994, the Secretary filed a motion to approve a negotiated settlement of several citations with Cyprus Emerald. Gov# Ex. A. Included in the motion was the parties= agreement to sever Citation No. 3658681 and transfer it to Docket No. PENN 94-23. *Id.* & 3. On May 3, 1994, Administrative Law Judge William Fauver granted the motion, but neglected to sever Citation No. 3658681 which, consequently, was dismissed along with the citations on which the parties had settled. Gov# Ex. B. Pursuant to section 105(a) of the Mine Act, 30 U.S.C. ' 815(a), the judge=s dismissal order became a final order of the Commission 40 days after its issuance. On March 6, 1998, the parties filed a Joint Motion for Stay with Chief Administrative Law Judge Paul Merlin, requesting that Citation No. 3658681 be stayed pending the Commission=s disposition of related citations in Docket No. PENN 94-23. Gov# Ex. C at 2. On March 10, 1998, Judge Merlin issued an order denying the parties= Joint Motion for Stay, and directing the parties to address their request for relief to the Commission. Gov# Ex. D.

The present motion requests that the Commission reopen PENN 94-23, and stay Citation No. 3658681 pending the Commission's adjudication of Docket No. PENN 94-23, which involves identical facts and similar issues, and currently is being considered by the Commission. *Jt. Mot. &&* 4, 7, 13. The parties assert that this relief is appropriate under Fed. R. Civ. P. 60(b)(1).¹ They provide no reason for their four-year delay in filing this motion.

The judge's jurisdiction over this case terminated when his dismissal order was issued on May 3, 1994. 29 C.F.R. ' 2700.69(b). Relief from a judge's decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. ' 823(d)(2); 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 judge's decision became final on June 12, 1994.

Relief from a final Commission judgment or order is available to a party under Fed. R. Civ. P. 60(b)(1) in circumstances such as mistake, inadvertence, or excusable neglect. *See* 29 C.F.R. ' 2700.1(b) (stating that the Federal Rules of Civil Procedure apply *As far as practicable* in the absence of applicable Commission rules); *see, e.g., Lloyd Logging, Inc.*, 13 FMSHRC 781, 782 (May 1991) (vacating default order and remanding matter to judge). *The motion [under Rule 60(b)(1)] shall be made within a reasonable time, and . . . not more than one year after the judgment, order, or proceeding was entered or taken.* Fed. R. Civ. P. 60(b). As we have previously recognized, this one-year time limit *May not be extended.* *Lakeview Rock Prods., Inc.*, 19 FMSHRC 26, 29 (January 1997) (quoting *Pena v. Eisenman Chem. Co.*, 11 FMSHRC 2166, 2167 (November 1989)). The parties' motion to reopen this proceeding was filed on March 18, 1998 *C* nearly four years after entry of judgment and, therefore, is untimely under

¹ Rule 60(b) provides in pertinent part: *On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect* Fed. R. Civ. P. 60(b).

Rule 60(b)(1). *See id.* at 28-29; *Thomas Hale*, 17 FMSHRC 1815, 1816-17 (November 1995). Accordingly, we deny the parties' motion for relief under Rule 60(b)(1).²

Mary Lu Jordan, Chairman

James C. Riley, Commissioner

Theodore F. Verheggen, Commissioner

² Commissioners Marks and Beatty vote to grant the motion.

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