

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

September 24, 1996

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. KENT 96-349
	:	A.C. No. 15-16454-03575
v.	:	
	:	Docket No. KENT 96-350
GREEN COAL COMPANY , INC.	:	A.C. No. 15-16454-03576

BEFORE: Jordan, Chairman; Marks and Riley, 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. (1994) (“Mine Act”). On August 26, 1996, the Commission received from Green Coal Company, Inc. (“Green Coal”) a request seeking to reopen 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). On September 10, the Commission received the Secretary of Labor’s response, opposing the request.

Under section 105(a) of the Mine Act, 30 U.S.C. § 815(a), 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).

The only reasons offered by Green Coal for the late filing of its hearing requests are that the company has been involved in bankruptcy proceedings, and that it is attempting to cut costs in order to save the mine operation and employee jobs. Section 110(i) of the Mine Act includes, among other criteria to be considered by the Commission in assessing penalties, “the appropriateness of such penalty to the size of the business,” and “the effect on the operator’s ability to stay in business.” 30 U.S.C. § 820(i). The Act nonetheless imposes certain burdens

and responsibilities on operators, perhaps the least of which is to sign the “Green Card” accompanying a citation and mail it to the address printed on the card in order to perfect their due process right to a hearing. Green Coal failed to timely file “Green Card” notices of contest challenging the proposed penalty assessments by the Department of Labor’s Mine Safety and Health Administration (“MSHA”).

The Commission has held that, in appropriate circumstances and pursuant to Fed. R. Civ. P. 60(b) (“Rule 60(b)”), it possesses jurisdiction to reopen uncontested assessments that have become final under section 105(a). *Jim Walter Resources, Inc.*, 15 FMSHRC 782, 786-89 (May 1993); *Rocky Hollow Coal Co.*, 16 FMSHRC 1931, 1932 (September 1994). Relief from a final order is available in circumstances such as a party's mistake, inadvertence, or excusable neglect. Requests to reopen under Rule 60(b) must be made within a reasonable time and are committed to the sound discretion of the judicial tribunal in which relief is sought. *Randall v. Merrill Lynch*, 820 F.2d 1317, 1320 (D.C. Cir. 1987), *cert. denied*, 484 U.S. 1027 (1988). *See also Tolbert v. Chaney Creek Coal Corp.*, 12 FMSHRC 615, 619 n.1 (April 1990). Rule 60(b) is “the mechanism by which courts temper the finality of judgments with the necessity to distribute justice” and “is a tool which trial courts are to use sparingly. . . .” *Randall*, 820 F.2d at 1322; *Pit*, 16 FMSHRC 2033, 2034 (October 1994).

Green Coal has offered no satisfactory explanation for its failure to timely file hearing requests in these cases. The mere fact that it is involved in bankruptcy proceedings, or in cutting costs, does not, in itself, provide a basis for relief under Rule 60(b). Moreover, Green Coal has failed to provide any explanation of how its involvement in bankruptcy proceedings or cost-cutting contributed to the late submission of its hearing requests. Thus, Green Coal has failed to set forth grounds establishing that Rule 60(b) relief is appropriate for the uncontested assessments that became final by operation of section 105(a) of the Mine Act. *See Tanglewood Energy, Inc.*, 17 FMSHRC 1105, 1107 (July 1995); *North Star Contractors, Inc.*, 17 FMSHRC 886, 887 (June 1995); *Pit*, 16 FMSHRC at 2034. Accordingly, we conclude that Green Coal’s request does not justify relief under Rule 60(b).

For the foregoing reasons, Green Coal's request for relief is denied.

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Mary Lu Jordan, Chairman

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Marc Lincoln Marks, Commissioner

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James C. Riley, Commissioner