

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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April 6, 2004

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. KENT 2002-242
	:	A.C. No. 15-16011-03530
v.	:	
	:	Docket No. KENT 2002-243
HIGHLANDS MINING & PROCESSING	:	A.C. No. 15-16011-03531
COMPANY, INC.	:	

BEFORE: Duffy, Chairman; Beatty, Jordan, Suboleski, and Young, Commissioners

ORDER

BY THE COMMISSION:

These civil penalty proceedings arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994) (“Mine Act”).¹ On July 25, 2002, former Chief Administrative Law Judge David Barbour issued to Highlands Mining & Processing Company, Inc. (“Highlands”) an Order to Show Cause in each of these two cases for failure to answer the Secretary of Labor’s petitions for assessment of penalty. On September 16, 2002, Chief Judge Barbour issued an Order of Default in each case dismissing the civil penalty proceedings for failure to respond to his show cause orders.

On October 7, 2002, the Commission received correspondence from Robert Stump, president of Highlands, which we construe as a request for relief from the default orders in each case. Mot. In its request, Highlands states that it seeks reconsideration of the default orders because “our representative at this time was ill . . . and we were unaware of the proper procedures in this matter.” *Id.* Highlands attached to its request an undated letter to the

¹ Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers KENT 2002-242 and KENT 2002-243, both captioned *Highlands Mining & Processing Company, Inc.*, and both involving issues similar to those addressed in this order. 29 C.F.R. § 2700.12.

Secretary of Labor's counsel summarizing the circumstances of each citation. Attach. The Secretary has not responded to Highland's request for relief.

The judge's jurisdiction in this matter terminated when his decision was issued on September 16, 2002. 29 C.F.R. § 2700.69(b). Under the Mine Act and the Commission's procedural rules, 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 Commission has not directed review of the judge's orders here, which became final decisions of the Commission on October 26, 2002.

In evaluating requests to reopen final orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure under which, for example, a party could be entitled to relief from a final order of the Commission on the basis of inadvertence or mistake. *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 Resources, Inc.*, 15 FMSHRC 782, 787 (May 1993). We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of good cause for a 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).

Having reviewed Highland's request, in the interests of justice, we hereby remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists to excuse Highland's failure to respond to the show cause orders and for further proceedings as appropriate.

Michael F. Duffy, Chairman

Robert H. Beatty, Jr., Commissioner

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

Distribution

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