

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”); *JWR*, 15 FMSHRC at 787. 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 to a penalty petition, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

On June 28, 2002, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued a proposed penalty assessment (A.C. No. 15-18161-03541 A) to Little alleging a violation of section 110(c) of the Mine Act. In his request to reopen, Little states that he did not timely file a request for hearing because neither he, his employer Coastal Coal, nor his counsel was served with the proposed assessment when it was issued. Mot. 1-2. After the deadline to file a request for hearing had passed, on April 7, 2003, counsel for Little received a copy of the proposed assessment along with a copy of a certified mail receipt postmarked August 6, 2002. *Id.* at 2. Little further asserts that his counsel telephoned MSHA, and was informed that because MSHA had never received the request for hearing, a letter demanding payment had been issued. *Id.* Counsel also learned that a default judgment had been issued against Little. *Id.* According to Little, MSHA then reviewed his file and found the original copy of the proposed assessment showing that it was returned without a signature of the recipient. *Id.* Little did not attach any supporting documentation to his request. The Secretary states that she does not oppose Little’s request for relief.

Having reviewed Little's request, in the interests of justice, we remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists for Little's failure to timely contest the penalty proposal and whether relief from the final order should be granted. If it is determined 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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