

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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October 17, 2006

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. KENT 2004-37-M
	:	A.C. No. 15-05484-11598
v.	:	
	:	
GEORGE P. REINTJES COMPANY, INC.	:	

BEFORE: Duffy, Chairman; Jordan and Young, 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. (2000) (“Mine Act”). On August 7, 2006, the Commission received a motion from the Secretary of Labor requesting that the Commission reopen the judgment in this proceeding and dismiss the proceeding as moot.

This proceeding arose when the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued a citation to George P. Reintjes Company, Inc. (“Reintjes”) on July 28, 2003. Mot. at 1. On October 23, 2003, MSHA sent to Reintjes a proposed penalty assessment for the citation, which the company timely contested. *Id.* at 2. In January 2004, MSHA vacated the citation. *Id.* When the Secretary moved to dismiss the case, however, the motion was captioned Docket No. SE 2004-37-M, instead of KENT 2004-37-M. *Id.* On March 4, 2004, Chief Administrative Law Judge Robert J. Lesnick, apparently unaware that the Secretary had vacated the citation and moved to dismiss this proceeding, issued an order directing Reintjes to file an answer to the Secretary’s penalty petition. *Id.* When the company failed to respond to the judge’s order, he entered a default judgment against Reintjes on May 13, 2004. *Id.*

The judge’s jurisdiction in this matter terminated when his decision was issued. 29 C.F.R. § 2700.69(b). It became a final decision of the Commission on June 22, 2004. 30 U.S.C. § 823(d)(1) (if the Commission does not direct review within 40 days of a decision’s issuance, it becomes a final decision of the Commission).

The Secretary argues in her motion that “[b]ecause the citation in Case No. KENT 2004-37-M was vacated in January 2004, the default judgment entered . . . on May 13, 2004, was invalid.” Mot. at 3. The Secretary “requests that the Commission reopen the default judgment on the ground that, under Rule 60(b)(4) of the Federal Rules of Civil Procedure, the judgment is ‘void.’” *Id.* Finally, the Secretary requests that the Commission dismiss this proceeding because, “inasmuch as the citation has been vacated, the proceeding is moot.” *Id.*

We have held that in appropriate circumstances, we possess jurisdiction to reopen final Commission orders. *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“*JWR*”). In evaluating requests to reopen final section 105(a) 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 that is “void.” Fed. R. Civ. P. 60(b)(4); *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 agree with the Secretary that vacating the citation rendered the judge’s default order void. *See Youghioghney & Ohio Coal Co.*, 7 FMSHRC 200, 203 (Feb. 1985) (“[V]acation of the underlying citation requires vacation of the judge’s decision affirming the citation.”).

Having reviewed the Secretary’s motion, in the interest of justice, we hereby reopen this proceeding, vacate the judge’s default order, and dismiss this matter as moot.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

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