

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW

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WASHINGTON, DC 20001

March 6, 2006

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. KENT 2006-174
	:	A.C. No. 15-10753-47267
v.	:	
	:	
CLEAN ENERGY MINING CO.	:	

BEFORE: Duffy, Chairman; Jordan, Suboleski, 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 February 17, 2006, the Commission received from Clean Energy Mining Co. (“Clean Energy”) a motion made by counsel to reopen a penalty assessment that had become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

On October 13, 2004, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued Citation No. 7414527 to Clean Energy’s Mine No. 1. Mot. at 1. The company timely contested the citation on November 12, 2004, and it is the subject of Docket No. KENT 2005-94-R, which is currently on stay before Commission Administrative Law Judge T. Todd Hodgdon. *Id.* When MSHA subsequently proposed a penalty for Citation No. 7414527, Clean Energy paid it. Mot. at 2. The company now contends that it made the payment inadvertently, and asserts that it had always intended to contest both the validity of the citation and any related penalty. *Id.*; Statement of Steve Endicott. The Secretary states that she does not oppose Clean Energy’s request for relief.

We have held that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *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 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.

Having reviewed Clean Energy’s motion, in the interests of justice, we remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists for Clean Energy’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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Michael F. Duffy, Chairman

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Mary Lu Jordan, Commissioner

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Stanley C. Suboleski, Commissioner

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Michael G. Young, Commissioner

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