

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW
SUITE 9500
WASHINGTON, DC 20001

June 2, 2006

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. KENT 2006-261
ADMINISTRATION (MSHA)	:	A.C. No. 15-17044-69425
	:	
v.	:	Docket No. KENT 2006-262
	:	A.C. No. 15-17044-72208
KMMC LLC d/b/a	:	
VISION MINING INC.	:	

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”).¹ On May 2, 2006, the Commission received from KMMC LLC d/b/a Vision Mining Inc. (“Vision Mining”) motions made by counsel to reopen two 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).

Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. 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).

In its motions, Vision Mining states that on or about October 11 and November 15, 2005, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued the proposed assessments that it now seeks to reopen. Mot. at 2 (the two motions to reopen filed by Vision Mining are similar, and citations herein are to both motions). Vision Mining states that the employee responsible for processing proposed penalty assessments mistakenly determined that the two penalty proposals had been included in a global settlement reached with MSHA

¹ Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers KENT 2006-261 and KENT 2006-262, both captioned *KMMC LLC d/b/a Vision Mining Inc.* and both involving similar procedural issues. 29 C.F.R. § 2700.12.

covering several unrelated proceedings. Mot. at 2-3; Exs. A (Decl. of Thomas Hughes) & B (copies of decisions approving settlement in the several proceedings covered by the global settlement agreement). The company also states that it had “always intended to contest these proposed assessed penalties.” Decl. at 3. The Secretary states that she does not oppose Vision Mining’s requests 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. 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 Vision Mining's motions, in the interests of justice, we remand these matters to the Chief Administrative Law Judge for a determination of whether good cause exists for Vision Mining's failure to timely contest the penalty proposals and whether relief from the final orders should be granted. If it is determined that such relief is appropriate, these cases shall proceed pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

Distribution

Peter S. Gould, Esq.
Patton Boggs, LLP
1660 Lincoln Street, Suite 1900
Denver, CO 80264

W. Christian Schumann, Esq.
Office of the Solicitor
U.S. Department of Labor
1100 Wilson Blvd., 22nd Floor
Arlington, VA 22209

Chief Administrative Law Judge Robert J. Lesnick
Federal Mine Safety and Health Review Commission
601 New Jersey Avenue, N.W. Suite 9500
Washington, D.C. 20001