

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

August 2, 2006

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. KENT 2006-406
	:	A.C. No. 15-02709-87642
v.	:	
	:	
HIGHLAND MINING COMPANY, LLC	:	

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 July 12, 2006, the Commission received from Highland Mining Company, LLC (“Highland”) 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).

In February 2006, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued eight citations to the Highland 9 Mine. Mot. at 1-2. The company timely contested the citations. The contest proceedings are currently on stay before Commission Administrative Law Judge T. Todd Hodgdon.¹ *Id.* When MSHA subsequently proposed penalties for the citations, Highland paid them. *Id.* at 2. The company now contends that it made the payment inadvertently. *Id.* The Secretary states that she does not oppose Highland’s request for relief.

¹ The contest proceedings underlying the proposed penalty assessment at issue in this request to reopen (Proposed Assessment No. 15-02709-87642) are as follows: KENT 2006-189-R, KENT 2006-190-R, KENT 2006-194-R, KENT 2006-195-R, KENT 2006-196-R, KENT 2006-202-R, KENT 2006-227-R, and KENT 2006-229-R.

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 Highland’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 Highland’s inadvertent payment, 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.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

Distribution

Rebecca J. Oblak, Esq.
Bowles, Rice McDavid
Graff & Love, LLP
7000 Hampton Center, Suite K
Morgantown, WV 26505

Neil A. Morholt, Esq.
Office of the Solicitor
U.S. Department of Labor
618 Church Street, Suite 230
Nashville, TN 37219

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