

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

February 17, 2009

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. KENT 2008-1482
v.	:	A.C. No. 15-18788-122198M
	:	
OMIS RICKY SMITH	:	

BEFORE: Duffy, Chairman; Jordan, Young, and Cohen, 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. (2006) (“Mine Act”). On August 21, 2008, the Commission received from Omis Ricky Smith (“Smith”) a letter 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).

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).

The Secretary states that upon review of the record, she has found that service of the proposed assessment was not achieved, and as a result, the assessment did not become a valid final order. The Secretary plans to resend the proposed assessment to the correct address and then Mr. Smith will have 30 days after receipt to contest the penalty. Accordingly, the Secretary submits that the request to reopen should be dismissed as moot.

Given the circumstances and in the interest of justice, we conclude that service of the proposed assessment was never made, and thus there is no final order under section 105(a) of the Mine Act. Hence, Mr. Smith's motion is moot and his request is dismissed.¹

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

¹ This means that at present, there is no order requiring Mr. Smith to pay a penalty. However, the Secretary has the right to send a copy of the proposed assessment to Mr. Smith at his correct address. Upon receipt of the re-sent proposed assessment, Mr. Smith will have to submit a notice of contest to MSHA. The matter will then be referred to the Commission for a hearing.

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