

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

April 4, 2008

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. KENT 2008-256
	:	A.C. No. 15-18241-126999
v.	:	
	:	
CLOVERLICK COAL COMPANY LLC	:	

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 December 6, 2007, the Commission received a letter requesting that the Commission reopen a penalty assessment issued to Cloverlick Coal Company LLC (“Cloverlick”) that may have become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).<sup>1</sup>

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).

On September 12, 2007, the Department of Labor’s Mine Safety and Health Administration issued Assessment No. 000126999, which proposed penalties for 34 citations that had previously been issued to Cloverlick. The operator states that it did not receive the assessment form until October 30, 2007. A handwritten note on the copy of the assessment attached to Cloverlick’s letter appears to suggest that the operator returned the form on or about

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<sup>1</sup> The letter also requested reopening of an assessment issued to an affiliated company, Panther Mining LLC. That request is the subject of a separate order issued today in Docket No. KENT 2008-257.

November 2, indicating its desire to contest 11 of the proposed penalties. The Secretary states that she does not oppose Cloverlick's request to reopen.

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 Cloverlick's request, in the interests of justice, we remand this matter to the Chief Administrative Law Judge for a determination of whether Cloverlick's contest was timely and, if it was not timely, whether good cause exists for granting relief from the final order. If Cloverlick's contest was timely, or if it is determined that it was not but that relief from the final order 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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Michael G. Young, Commissioner

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