

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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July 14, 2006

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. LAKE 2006-120
ADMINISTRATION (MSHA)	:	A.C. No. 33-01159-10178
	:	
v.	:	Docket No. LAKE 2006-121
	:	A.C. No. 33-01159-14802
THE OHIO VALLEY COAL COMPANY	:	
	:	Docket No. LAKE 2006-122
	:	A.C. No. 33-01159-26070

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 30, 2006, the Commission received a letter from the corporate safety director of The Ohio Valley Coal Company (“Ohio Valley Coal”) requesting that the Commission reopen three 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).

On October 8 and December 10, 2003, and May 5, 2004, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) sent to Ohio Valley Coal the proposed penalty

¹ Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers LAKE 2006-120, LAKE 2006-121, and LAKE 2006-122, all captioned *The Ohio Valley Coal Company* and all involving similar procedural issues. 29 C.F.R. § 2700.12.

assessments at issue. Ohio Valley Coal states that “[c]ontest forms were filed with the Civil Penalty Compliance Office,” but that MSHA has told the company that it has been unable to locate the contest forms. In her response to Ohio Valley Coal’s letter, the Secretary states that although she “has no record that the penalty contest forms . . . were received by MSHA,” she further states that she “has no basis . . . for questioning that those forms were sent to [MSHA] as asserted” by Ohio Valley Coal. Accordingly, the Secretary does not oppose the company’s requests for relief.

On the record before us, we are unable to determine whether Ohio Valley Coal timely contested the proposed penalty assessments. If the company did so, the proposed assessments have not become final orders of the Commission and the company’s requests for relief would be moot. However, if Ohio Valley Coal failed to timely contest the proposed assessments, we would not be able to grant the relief requested. Under Rule 60(b) of the Federal Rules of Civil Procedure,² any motion for relief from a final order must be made within a reasonable time, and in the case of mistake, inadvertence, or excusable neglect not more than one year after the order was entered. Fed. R. Civ. P. 60(b). Here, Ohio Valley Coal has requested reopening of proposed assessments more than one year after they became final Commission orders if the company did not file a timely contest. *See JS Sand & Gravel, Inc.*, 26 FMSHRC 795, 796 (Oct. 2004) (denying request to reopen filed more than one year after penalty proposals had become final orders).

² 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). In evaluating requests to reopen final section 105(a) orders, the Commission has found guidance in Rule 60(b) 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. *Id.* at 787.

Accordingly, we remand this matter to the Chief Administrative Law Judge for a determination of whether Ohio Valley Coal timely contested the proposed penalty assessments at issue. If it is determined that the company did file timely contests, the Chief Judge shall order further proceedings as appropriate pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700. If it is determined that Ohio Valley Coal failed to timely contest the proposed assessments, the Chief Judge shall dismiss these consolidated proceedings.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

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