

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

December 20, 2006

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
 : Docket No. LAKE 2006-152-M
v. : A.C. No. 21-01600-60300
 :
HIBBING TACONITE COMPANY :

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 September 20, 2006, the Commission received from Hibbing Taconite Company (“HTC”) a motion by counsel seeking 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).

On June 28, 2005, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued a proposed penalty assessment to HTC for two citations. HTC submitted payment for one, Citation No. 6175445, and allegedly indicated on the assessment form that it wished to contest the proposed penalty assessment for the other, Citation No. 6175063. HTC asserts that it intended to contest the penalty within the 30-day time period, and “it is unclear at this point on what date MSHA received the notification of contest.” In her response to HTC’s motion, the Secretary states that although she “has no record that the penalty contest form . . . was received by MSHA,” she further states that she “has no basis . . . for questioning that this

form was sent to MSHA in a timely manner as asserted.” Accordingly, the Secretary does not oppose HTC’s motion to reopen.

On the record before us, we are unable to determine whether HTC timely contested the proposed penalty assessment. If the company did so, the proposed assessment has not become a final order of the Commission and the company’s request for relief would be moot. *DS Mine & Development LLC*, 28 FMSHRC 462, 463 (July 2006). However, if HTC failed to timely contest the proposed assessment, we would not be able to grant the relief requested. *Id.* Under Rule 60(b) of the Federal Rules of Civil Procedure,¹ 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, HTC has requested reopening of a proposed assessment more than one year after it became a final Commission order 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).

¹ 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 HTC timely contested the proposed penalty assessment at issue. If it is determined that the company did file a timely contest, 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 HTC failed to timely contest the proposed assessment, the Chief Judge shall dismiss this proceeding.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

Distribution

R. Henry Moore, Esq.
Jackson Kelly, PLLC
Three Gateway Center
401 Liberty Avenue, Suite 1340
Pittsburgh, PA 15222

W. Christian Schumann, Esq.
Office of the Solicitor
U.S. Department of Labor
1100 Wilson Blvd., 22nd Floor
Arlington, VA 22209-2296

Christine M. Kassak Smith, Esq.
Office of the Solicitor
U.S. Department of Labor
230 S. Dearborn St., 8th Floor
Chicago, IL 60604

Chief Administrative Law Judge Robert J. Lesnick
Federal Mine Safety & Health Review Commission
601 New Jersey Avenue, N.W., Suite 9500
Washington, D.C. 20001-2021