

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

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WASHINGTON, DC 20001

July 24, 2007

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. LAKE 2007-139
	:	A.C. No. 000113419
	:	
v.	:	
	:	
THE AMERICAN COAL 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 June 25, 2007,¹ the Commission received from The American Coal Company (“American Coal”) a motion by counsel seeking to reopen 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).

As a result of citations issued during 2006 and 2007, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued a Proposed Assessment sheet dated March 14, 2007, to American Coal. In American Coal’s motion to reopen, counsel states that the company was going through a change in personnel in its inhouse legal department and that it

¹ On July 3, 2007, American Coal supplemented its original filing by submitting an amended Exhibit A. The significance of any differences in the original Exhibit A and the amended Exhibit A is not apparent from the supplemental filing, and counsel provides no explanation.

intended to contest certain proposed assessments but erroneously failed to do so. In response, the Secretary states that she does not oppose reopening the proposed penalty assessments but clarifies that three of the proposed penalties on the assessment sheet had been paid.

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 American Coal's request, in the interests of justice, we remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists for American Coal's failure to timely contest the penalty proposal 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 2700.²

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

² In its motion, American Coal has not identified the relevant penalty assessments and associated citations that are included on the Proposed Assessment sheet, which contained 149 proposed penalties that had become final orders. Thus, the specific assessments from which it seeks relief are not apparent from the motion and amended exhibit. On remand, American Coal must identify for the judge the proposed assessments on the Proposed Assessment sheet from which American Coal seeks relief.

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