

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

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WASHINGTON, DC 20001

July 16, 2008

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. LAKE 2008-286
ADMINISTRATION (MSHA)	:	A.C. No. 12-02010-120120
	:	
v.	:	
	:	Docket No. LAKE 2008-287
BLACK BEAUTY COAL COMPANY	:	A.C. No. 12-02295-120222
	:	

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. (2000) (“Mine Act”).¹ On March 24, 2008, the Commission received from Black Beauty Coal Company (“Black Beauty”) motions by counsel seeking to reopen two 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 June 13, 2007, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued to Black Beauty two proposed assessments. According to Black Beauty, it elected to contest certain penalties on each of the proposed assessments and the appropriate boxes were checked. Black Beauty states that it elected not to contest the remaining penalties

¹ Pursuant to Commission Procedural Rule 12, 29 C.F.R. § 2700.12, on our own motion, we hereby consolidate Docket Nos. Lake 2008-286 and LAKE 2008-287, as both dockets involve similar procedural issues and similar factual backgrounds.

and forwarded payment checks and the proposed assessment forms to MSHA within 30 days from receipt of the proposed assessments. On September 12, 2007, MSHA issued delinquency notices as a result of the unpaid penalties in the two proposed assessments. Thereafter, on December 17, 2007, MSHA issued to Black Beauty civil penalty collection reports, which indicated that the penalties that Black Beauty had contested were outstanding.

In response, the Secretary states that Black Beauty's payments for the uncontested penalties and the penalty assessment forms were mailed to MSHA's payment processing office in Pittsburgh, Pennsylvania. However, the Secretary states that all notices of contest must be sent to MSHA's Civil Penalty Compliance Office in Arlington, Virginia. The Secretary concludes by stating that she does not oppose the reopening of the assessments.

We have held that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessment forms 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 Black Beauty's request and the Secretary's response, in the interests of justice, we remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists for Black Beauty's failure to timely contest the penalty proposals and whether relief from the final orders 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.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

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