

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

April 30, 2002

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. LAKE 2002-18-M
ADMINISTRATION (MSHA)	:	A.C. No. 11-01578-05569
	:	
v.	:	Docket No. LAKE 2002-19-M
	:	A.C. No. 11-01578-05570
WEDRON SILICA	:	

BEFORE: Verheggen, Chairman; Jordan and Beatty, 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. (1994) (“Mine Act”). On November 19, 2001, the Commission received from Wedron Silica a request 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 has 30 days following receipt of the Secretary of Labor’s proposed penalty assessment within which to notify the Secretary that it wishes to contest the proposed penalty. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. *Id.*

On August 7, 2001, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued Wedron Silica two proposed penalty assessments. Mot., attachments. One proposed penalty assessment (A.C. No. 11-01578-05569) listed 19 citations with proposed penalties in the sum of \$1290. *Id.* The other proposed penalty assessment (A.C. No. 11-01578-05570) listed four citations with proposed penalties in the sum of \$558. *Id.* In its request, Wedron Silica, apparently proceeding pro se, contends that it filed a green card for each proposed penalty assessment contesting some of the penalties but that it also paid MSHA the proposed

penalties for the remaining uncontested citations. Mot. Wedron Silica states that it was informed by MSHA that the agency did not receive the green cards. *Id.* Attached to its request are copies of the two green cards, both signed and dated September 6, 2001 by a company official. *Id.*, attachment. The box on each green card indicating that the operator wished to contest some of the proposed penalties has been checked. *Id.* On the green card listing 19 citations (A.C. No. 11-01578-05569), the operator circled two of the citations (Citation Nos. 06141257 and 06141261) with penalties in the sum of \$355. *Id.* Notations by the operator on the green card indicate that of the total of \$1290 in penalties, \$935 was paid and \$355 was contested. *Id.* On the green card listing four citations (A.C. No. 11-01578-05570), the operator circled two of the citations (Citation Nos. 06141290 and 06141291) with penalties in the sum of \$448. *Id.* Notations by the operator on the green card indicate that of the total of \$558 in penalties, \$110 was paid and \$448 was contested. *Id.*

We have held that, in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“*JWR*”); *Rocky Hollow Coal Co.*, 16 FMSHRC 1931, 1932 (Sept. 1994). We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of adequate or good cause for the 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). In reopening final orders, the Commission has found guidance in, and has applied “so far as practicable,” Fed. R. Civ. P. 60(b). *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. In accordance with Rule 60(b)(1), we previously have afforded a party relief from a final order of the Commission on the basis of inadvertence or mistake. *See Gen. Chem. Corp.*, 18 FMSHRC 704, 705 (May 1996); *Kinross DeLamar Mining Co.*, 18 FMSHRC 1590, 1591-92 (Sept. 1996); *Stillwater Mining Co.*, 19 FMSHRC 1021, 1022-23 (June 1997).

Wedron Silica has offered a sufficient explanation demonstrating that it intended to contest the penalties relating to Citation Nos. 06141257, 06141261, 06141290, and 06141291, and that the proposed penalty assessments as to those citations became final as a result of “inadvertence” or “mistake.” *See Eighty Four Mining Co.*, 23 FMSHRC 1102, 1102-04 (Oct. 2001) (granting relief where operator paid some of the penalties and allegedly submitted green card contesting the other penalties but MSHA did not receive the green card); *Eighty Four Mining Co.*, 21 FMSHRC 876, 876-78 (Aug. 1999) (same). Wedron Silica’s intention to contest these penalties is supported by the copies of the signed and dated green cards attached to its request and by its uncontested assertion that it paid the remaining uncontested penalties. We also note that the Secretary does not oppose Wedron Silica’s request. In addition, no other circumstances exist that would render a grant of relief here

problematic. Accordingly, in the interest of justice, we grant Wedron Silica’s unopposed request for relief to reopen the penalty assessments that became final orders with respect to Citation Nos.

06141257, 06141261, 06141290, and 06141291. This case shall proceed pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.

Theodore F. Verheggen, Chairman

Mary Lu Jordan, Commissioner

Robert H. Beatty, Jr., Commissioner

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