

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

November 30, 2005

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. PENN 2005-245
ADMINISTRATION (MSHA)	:	A.C. No. 36-07059-42383
	:	
v.	:	Docket No. PENN 2005-246
	:	A.C. No. 36-07059-44995
CHESTNUT COAL COMPANY	:	
	:	Docket No. PENN 2005-247
	:	A.C. No. 36-07059-51978
	:	
	:	Docket No. PENN 2005-248
	:	A.C. No. 36-07059-58839
	:	
	:	Docket No. PENN 2005-249
	:	A.C. No. 36-07059-61229

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 August 17, 2005, the Commission received from Chestnut Coal Company (“Chestnut”) motions made by counsel to reopen five 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

¹ Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers PENN 2005-245, PENN 2005-246, PENN 2005-247, PENN 2005-248, and PENN 2005-249, all captioned *Chestnut Coal Company* and all involving similar procedural issues. 29 C.F.R. § 2700.12.

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 November 10 and December 8, 2004, and March 9, June 8, and July 6, 2005, the Department of Labor's Mine Safety and Health Administration ("MSHA") issued proposed assessments to Chestnut. Mot. at 1, Ex. (the five motions to reopen filed by Chestnut are similar, and citations herein are to all five motions). In its motions, Chestnut states that the employee responsible for processing proposed penalty assessments for the company was familiar with contest procedures that existed prior to 2004, i.e., returning a "green card" to MSHA. Mot. at Aff. This employee was unaware of new contest procedures that require a plain white printout to be returned to MSHA. *Id.* The employee discovered his error when he consulted with Chestnut's attorney. *Id.* Chestnut further states that it had intended to contest the proposed penalties. *Id.* The Secretary states that she does not oppose Chestnut's requests for relief.

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 Chestnut's motions, in the interests of justice, we remand these matters to the Chief Administrative Law Judge for a determination of whether good cause exists for Chestnut'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, these cases 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

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

Distribution

Adele L. Abrams, Esq.
Law Office of Adele L. Abrams, P.C.
4740 Corridor Place, Suite D
Beltsville, MD 20705

W. Christian Schumann, Esq.
Office of the Solicitor
U.S. Department of Labor
1100 Wilson Blvd., 22nd Floor West
Arlington, VA 22209-2247

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