FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

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WASHINGTON, DC 20001

December 8, 2005

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. PENN 2006-1
	:	A.C. No. 36-07059-63884
v.	:	
	:	
CHESTNUT COAL	:	

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"). On October 4, 2005, the Commission received from Chestnut Coal ("Chestnut") a motion made by counsel 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 August 10, 2005, the Department of Labor's Mine Safety and Health Administration ("MSHA") issued a proposed penalty assessment to Chestnut for citations and orders issued to the company by MSHA on February 1 and 14, 2005. Mot. at 1. Chestnut states in its motion that it had already timely contested the citations and orders, which are the subject of Docket Nos. PENN 2005-120-R through PENN 2005-123-R and PENN 2005-125-R through PENN 2005-129-R.[1] Mot. at 1. Those proceedings are currently on stay before Commission Administrative Law Judge Gary Melick. Chestnut states that it failed to timely contest the proposed penalty

[1] On August 4, 2005, Chestnut's contest in Docket No. PENN 2005-124-R was dismissed because the Secretary had vacated the citation at issue.

assessment at issue because Joe Shingara, Chestnut's management representative, believed that the company's contests of the citations and orders obviated the need to respond to the proposed penalty assessment. *Id*. at 1-2; Aff. of J. Shingara. The Secretary states that she does not oppose Chestnut's request 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 motion, in the interests of justice, we remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists for Chestnut'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.

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Michael F. Duffy, Chairman

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Mary Lu Jordan, Commissioner

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Stanley C. Suboleski, Commissioner

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Michael G. Young, Commissioner

Distribution

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