

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

February 27, 2006

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. PENN 2006-75-M
ADMINISTRATION (MSHA)	:	A.C. No. 36-07156-47898
	:	
v.	:	Docket No. PENN 2006-76-M
	:	A.C. No. 36-07156-67440 A
	:	
WILLIAMS & SONS	:	
SLATE & TILE, INC.	:	Docket No. PENN 2006-77-M
	:	A.C. No. 36-07156-70601
	:	
	:	Docket No. PENN 2006-78-M
	:	A.C. No. 36-07156-45867

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 January 30, 2006, the Commission received a letter from Robert Williams, Sr., of Williams & Sons Slate & Tile, Inc. (“Williams & Sons”) requesting that the Commission reopen four 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). On February 6, 2006, the Secretary of Labor filed a Response to Request to Reopen Penalty Assessments (a clarification was subsequently filed on February 15). Williams & Sons did not reply to the Secretary’s response.

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 2006-75-M, PENN 2006-76-M, PENN 2006-77-M, and PENN 2006-78-M, all captioned *Williams & Sons Slate & Tile, Inc.*, 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).

The Secretary states that the Department of Labor's Mine Safety and Health Administration ("MSHA") issued the following proposed assessments to Williams & Sons on the dates noted: A.C. No. 36-07156-45867 (PENN 2006-78-M), issued on December 16, 2004 (received by the operator on December 28, 2004, and becoming a final Commission order on January 27, 2005);² A.C. No. 36-07156-47898 (PENN 2006-75-M), issued on January 13, 2005; A.C. No. 36-07156-67440 A (PENN 2006-76-M), issued on September 15, 2005; and A.C. No. 36-07156-70601 (PENN 2006-77-M), issued on October 28, 2005. In his letter, Williams states that his health has been "day to day." No further explanation is offered regarding his company's failure to timely contest the penalty proposals at issue, although the letter states that Williams & Sons wishes "to appeal the citations" underlying the penalty proposals. The Secretary states that she does not have enough information to determine whether reopening these dockets may be warranted.

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) 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).

² Williams & Sons filed its request to reopen A.C. No. 36-07156-45867 (at issue in Docket No. PENN 2006-78-M) on January 26, 2006, the day the request was mailed. *See* 29 C.F.R. § 2700.5(d) (with a few exceptions noted including petitions for discretionary review and certain procedural motions, "[w]hen filing is by mail, filing is effective upon mailing"). The company's request is thus not time barred under the one-year principles set forth in *J S Sand & Gravel, Inc.*, 26 FMSHRC 795, 796 (Oct. 2004).

Having reviewed Williams & Sons's request for relief, in the interests of justice, we remand these matters to the Chief Administrative Law Judge for a determination of whether good cause exists for Williams & Sons'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

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