

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

April 4, 2000

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
 :
v. : Docket No. PENN 2000-88-M
 :
COLLIER STONE COMPANY :

BEFORE: Jordan, Chairman; Marks, Riley, Verheggen, and Beatty, Commissioners

ORDER

BY: Jordan, Chairman; Riley and Beatty, Commissioners

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994) (“Mine Act”). On February 23, 2000, the Commission received from Collier Stone Company (“Collier”) 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). The Secretary of Labor does not oppose the motion for relief filed by Collier.

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. 30 U.S.C. § 815(a).

In its request, Collier asserts that the proposed penalties are excessive and unreasonable in relation to the size and profitability of its operations, and the nature of the violations. Mot. It also states that it is experiencing financial, operational, and emotional difficulties due to the recent death of its co-founder and former quarry foreman, and that the proposed penalties would have a severe financial impact on its operations. *Id.* Accordingly, Collier requests an opportunity to contest the proposed penalty assessments. *Id.*

We have held that, in appropriate circumstances and pursuant to Fed. R. Civ. P. 60(b), we possess jurisdiction to reopen uncontested assessments that have become final by operation of section 105(a). *See, eg., Kenamerican Resources, Inc.*, 20 FMSHRC 199, 201 (March 1998); *Jim Walter Resources, Inc.*, 15 FMSHRC 782, 786-89 (May 1993). 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 Preservation Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995). 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 National Lime & Stone, Inc.*, 20 FMSHRC 923, 925 (Sept. 1998); *Peabody Coal Co.*, 19 FMSHRC 1613, 1614-15 (Oct. 1997); *Stillwater Mining Co.*, 19 FMSHRC 1021, 1022-23 (June 1997); *Kinross DeLamar Mining Co.*, 18 FMSHRC 1590, 1591-92 (Sept. 1996).

On the basis of the present record, we are unable to evaluate the merits of Collier's position.¹ In the interest of justice, we remand the matter for assignment to a judge to determine whether Collier has met the criteria for relief under Rule 60(b). *See Tigue Constr. Co.*, 21 FMSHRC 9 (Jan. 1999) (remanding where the operator's vice-president, allegedly responsible for handling MSHA-related matters, was hospitalized for quadruple bypass surgery); *Wolf Creek Sand & Gravel*, 21 FMSHRC 1 (Jan. 1999) (remanding where the responsible employee was out of the office for an extensive period of time due to her husband's hospitalization). If the judge determines 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.

Mary Lu Jordan, Chairman

James C. Riley, Commissioner

Robert H. Beatty, Jr., Commissioner

¹ In view of the fact that the Secretary does not oppose Collier's motion to reopen this matter for a hearing on the merits, Commissioners Marks and Verheggen conclude that the motion should be granted.

Distribution

Patrick F. McShane, President
Collier Stone Company
80 Noblestown Road
Carnegie, PA 15106

W. Christian Schumann, Esq.
Office of the Solicitor
U.S. Department of Labor
4015 Wilson Blvd., Suite 400
Arlington, VA 22203

Chief Administrative Law Judge David Barbour
Federal Mine Safety & Health Review Commission
1730 K Street, N.W., Suite 600
Washington, D.C. 20006