FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

July 18, 1995

SECRETARY OF LABOR, :

MINE SAFETY AND HEALTH :

ADMINISTRATION (MSHA) : Docket No. KENT 95-596

A.C. No. 15-17077-03541

v. :

:

RB COAL COMPANY, INC.

:

BEFORE: Jordan, Chairman; Doyle, Holen and Marks, 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. (1988) (AMine Act@). On June 21, 1995, the Commission received from RB Coal Company, Inc. (ARB@) a request seeking 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), an operator has 30 days following receipt of the Secretary's proposed penalty assessment within which to notify the Secretary that it wishes to contest the proposed penalty. If the operator fails to so notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. '815(a).

RB states that it did not mail a AGreen Card@request for a hearing until Aday 45" because the card had been misplaced among its papers on penalty assessments that it intended to pay. RB states that it is proceeding pro se and has recently implemented procedures for contesting penalties.

The Commission has held that, in appropriate circumstances and pursuant to Fed. R. Civ. P. 60(b), it possesses jurisdiction to reopen uncontested assessments that have become final under section 105(a). *Jim Walter Resources, Inc.*, 15 FMSHRC 782, 786-89 (May 1993); *Rocky Hollow Coal Co.*, 16 FMSHRC 1931, 1932 (September 1994). Relief from a final

order is available in circumstances such as a party's mistake, inadvertence, or excusable neglect.

On the basis of the present record, we are unable to evaluate the merits of RB's position. In the interest of justice, we remand the matter for assignment to a judge to determine whether RB has met the criteria for relief under Rule 60(b). 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.

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