

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

March 29, 2004

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. SE 2003-203
v.	:	A.C. No. 01-01247-03898 YXR A
	:	
KEITH CRABTREE, employed by	:	
PRO-INDUSTRIAL WELDING, INC.	:	

BEFORE: Duffy, Chairman; Beatty, 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. (1994) (“Mine Act”). On September 29, 2003, the Commission received from Keith Crabtree, President of Pro-Industrial Welding, Inc. (“PIW”), correspondence which we construe as a motion to reopen a penalty assessment for a violation of section 110(c) of the Mine Act, 30 U.S.C. § 820(c), 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 individual charged with a violation under section 110(c) has 30 days following receipt of the Secretary of Labor’s proposed penalty assessment within which to notify the Secretary that he or she wishes to contest the proposed penalty. 30 U.S.C. § 815(a); *see also* 29 C.F.R. § 2700.26. If the individual fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a); 29 C.F.R. § 2700.27.

In his motion, Crabtree states that the subject proposed penalty assessment (No. 01-01247-03898 YXR A) was issued in connection with Citation No. 7676880 and received by PIW on July 23, 2003. Mot. at 1. At that time, a proposed penalty assessment involving the same citation had been issued to PIW; PIW had filed a notice to contest the proposed penalty; and the proceeding had been assigned to a Commission Administrative Law Judge. *Id.* Crabtree

states that he and another representative of PIW participated in a conference call with Leslie John Rodriguez of the Secretary of Labor's Regional Solicitor's Office in Atlanta, Georgia, and expressed to him PIW's desire to consolidate the case against PIW with the case against Crabtree, the sole principal and owner of PIW. *Id.* On September 22, 2003, Rodriguez contacted PIW regarding the failure of Crabtree to respond to the proposed penalty assessment. *Id.* It is Crabtree's position that he was not aware that he had to file a separate notice after the discussion regarding consolidation of the cases, and he requests reopening to contest the penalty assessment in the case against him. *Id.* at 1-2. The Secretary states that she does not oppose Crabtree'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 Crabtree'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 Crabtree'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.

Michael F. Duffy, Chairman

Robert H. Beatty, Jr., Commissioner

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

Distribution

Terry Keith Crabtree, President
PIW Incorporated
Route 3, Box 259
Saltville, VA 24370

W. Christian Shumann, 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