

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

May 25, 2004

|                          |   |                          |
|--------------------------|---|--------------------------|
| SECRETARY OF LABOR,      | : |                          |
| MINE SAFETY AND HEALTH   | : |                          |
| ADMINISTRATION (MSHA)    | : |                          |
|                          | : | Docket No. SE 2004-111-M |
| v.                       | : | A.C. No. 08-01203-18680  |
|                          | : |                          |
| YOUNGQUIST BROTHERS ROCK | : |                          |

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 March 29, 2004, the Commission received from Youngquist Brothers Rock (“Youngquist”) correspondence that we construe as a motion 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 February 10, 2004, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued to Youngquist a proposed penalty assessment (A.C. No. 08-01203-18680). In its motion, Youngquist explains that it was not aware of the proposed assessment until March 15, 2004, when it received from MSHA a notice of an outstanding balance for the proposed assessment. Mot. Youngquist states that it contacted MSHA’s Civil Penalty Compliance Office to inquire about the proposed assessment, and on March 17, 2004, was faxed a copy of the proposed assessment. *Id.* Youngquist also learned from MSHA that the original certified letter from MSHA, containing the proposed assessment, was postmarked February 12, 2004, and was returned to MSHA unclaimed. *Id.* Youngquist further states that it contacted its local post office

and learned that there was staff turnover, which may have resulted in confusion about road addresses and caused delivery problems during the time that the proposed assessment was sent. *Id.* The Secretary states that she does not oppose Youngquist'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 Youngquist'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 Youngquist'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

Joel Gerhard  
Manager & Human Resources  
Youngquist Brothers Rock  
15401 Alico Road  
Fort Myers, FL 33913

W. Christian Schumann, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
1100 Wilson Blvd., 22<sup>nd</sup> Floor  
Arlington, VA 22203

Chief Administrative Law Judge Robert J. Lesnick  
Federal Mine Safety and Health Review Commission  
601 New Jersey Avenue, N.W., Suite 9500  
Washington, D.C. 20001-2021