

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW
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October 30, 2006

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| SECRETARY OF LABOR, | : | |
| MINE SAFETY AND HEALTH | : | |
| ADMINISTRATION (MSHA) | : | Docket Nos. SE 2005-250 |
| | : | SE 2005-251 |
| v. | : | SE 2005-252 |
| | : | |
| OAK GROVE RESOURCES, LLC. | : | |

BEFORE: Duffy, Chairman; Jordan 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 October 12, 2005, Chief Administrative Law Judge Robert J. Lesnick issued to Oak Grove Resources, LLC. (“Oak Grove”) three Orders to Show Cause for failure to answer the Secretary of Labor’s petitions for assessment of civil penalty. On January 19, 2006, Chief Judge Lesnick entered Orders of Default against Oak Grove in each of the three cases.

On August 22, 2006, the Commission received motions from Oak Grove requesting that the Commission reopen the penalty assessment proceedings and relieve Oak Grove from the orders of default. Oak Grove states that, in all three cases, a notice of appearance was filed by Oak Grove’s Safety Director within 30 days of receiving the Petition for Assessment of Penalty from the Department of Labor’s Mine Safety and Health Administration (“MSHA”). The notice of appearance, which is not contained in the file or attached to the motion, allegedly listed the appropriate contact as an address in Pennsylvania. However, the orders to show cause and the default orders were sent to the General Manager of Oak Grove at the mine site in Adger, Alabama. Oak Grove alleges that its Safety Director did not timely receive the orders to show

¹ Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate Docket Nos. SE 2005-250, SE 2005-251, and SE 2005-252, all captioned *Oak Grove Resources, LLC.*, and all involving similar procedural issues. 29 C.F.R. § 2700.12.

cause and default orders because they were not sent to the designated address.

The judge's jurisdiction in this matter terminated when his decision was issued on January 19, 2006. 29 C.F.R. § 2700.69(b). Under the Mine Act and the Commission's procedural rules, relief from a judge's decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2); 29 C.F.R. § 2700.70(a). If the Commission does not direct review within 40 days of a decision's issuance, it becomes a final decision of the Commission. 30 U.S.C. § 823(d)(1). The judge's orders became final decisions of the Commission on February 28, 2006.

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).

Upon review of the record, we have determined that the wording of the Orders to Show Cause did not conform with the Commission's Procedural Rules. Accordingly, in the interest of justice, we hereby vacate the Orders of Default and remand this matter to the Chief Judge for further appropriate proceedings. *See Paul F. Becker Coal Co.*, 28 FMSHRC 237, 238 (May 2006).

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

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