

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

May 18, 2005

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. SE 2005-27
ADMINISTRATION (MSHA)	:	A.C. No. 01-00851-39186
	:	
v.	:	Docket No. SE 2005-35
	:	A.C. No. 01-00851-41158
OAK GROVE RESOURCES, LLC	:	

BEFORE: Duffy, Chairman; Jordan, Suboleski, and Young, Commissioners

DIRECTION FOR REVIEW AND ORDER

BY THE COMMISSION:

These civil penalty proceedings arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2000) (“Mine Act”).¹ On February 23, 2005, Chief Administrative Law Judge Robert Lesnick issued to Oak Grove Resources, LLC (“Oak Grove”) two Orders to Show Cause for failure to answer the Secretary of Labor’s petitions for assessment of penalty in both civil penalty proceedings. On April 13, 2005, Chief Judge Lesnick issued two Orders of Default dismissing these proceedings for failure to respond to the show cause orders.

On April 25, 2005, the Commission received from Oak Grove a letter signed by Michael E. Blevins, Oak Grove’s Safety Director. Letter. In the letter, Blevins states that Pinn Oak Resources was founded on July 1, 2003 and employs persons who are unfamiliar with the assessment process. *Id.* He further states that the employee who signed for the certified mail did not understand the urgency in responding, and thus failed to forward the letters in a timely manner to the proper parties. *Id.* Blevins also states that he is not always in the office because he travels between two mines and requests that all future correspondence be addressed to him at his

¹ Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers SE 2005-27 and SE 2005-35, both captioned *Oak Grove Resources, LLC* and both involving issues similar to those addressed in this order. 29 C.F.R. § 2700.12.

home address. *Id.* Oak Grove asks the Commission to grant its motion to reopen. *Id.* The Secretary has not taken a position on Oak Grove's request to reopen.

The judge's jurisdiction in this matter terminated when his orders were issued on April 13, 2005. 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)(A)(i); 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). We construe Oak Grove's motion to be a timely filed petition, which we grant.

In evaluating requests to reopen final 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"); *Highlands Mining & Processing Co.*, 24 FMSHRC 685, 686 (July 2002). 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 Oak Grove's request, in the interest of justice, we hereby remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists for Oak Grove's failure to timely respond to the judge's show cause order, and for further proceedings as appropriate.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

Distribution

Michael E. Blevins, Director of Safety
Oak Grove Resources, LLC
9501 Sundance Drive
Bridgeville, PA 15013

W. Christian Schumann, Esq.
Office of the Solicitor
U.S. Department of Labor
1100 Wilson Blvd., 22nd Floor
Arlington, VA 22209

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