

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

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WASHINGTON, DC 20001

July 11, 2006

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

LEHIGH CEMENT COMPANY

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Docket No. SE 2006-172-M
A.C. No. 01-00043-32236

BEFORE: Duffy, Chairman; 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. (2000) (“Mine Act”). On April 26, 2006, the Commission received from Lehigh Cement Company (“Lehigh”) a motion made by counsel to reopen a penalty assessment that the company believed had become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a). The Secretary responded to Lehigh’s motion in a letter dated May 2, 2006.

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).

In its motion, Lehigh states that on July 15, 2004, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) sent the company the proposed penalty assessment at issue, and that a company official timely contested two of the five citations listed in the proposed assessment. Mot. at 2-3; Earl Aff. at 2. On March 20, 2006, however, Lehigh states that it received a notice from MSHA stating that the penalties against it were delinquent. Mot. at 2.

In her response to Lehigh’s motion, the Secretary states that Rule 60(b) of the Federal Rules of Civil Procedure (from which the Commission has found guidance in evaluating requests to reopen final orders) “is inapplicable,” and Lehigh’s motion would not be time barred, because

“the proposed penalty assessment[was] effectively contested in a timely manner.” Sec’y Response at 1.

Having reviewed Lehigh’s motion and the Secretary’s response, we conclude that the proposed assessment at issue has not become a final order of the Commission because Lehigh timely contested it. We deny Lehigh’s motion as moot and remand this matter to the Chief Administrative Law Judge for further proceedings as appropriate pursuant to the Mine Act and the Commission’s Procedural Rules, 29 C.F.R. Part 2700.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

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