



March 20, 2006, he received a notice from MSHA stating that the penalty against him was delinquent. Mot. at 2.

In her response to Strunk'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 Strunk'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 Strunk'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 Strunk timely contested it. We deny Strunk'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.

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Michael F. Duffy, Chairman

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Mary Lu Jordan, Commissioner

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Stanley C. Suboleski, Commissioner

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Michael G. Young, Commissioner

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