

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW
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October 4, 2007

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. SE 2007-469-M
v.	:	A.C. No. 31-01990-122706
	:	
G. S. MATERIALS, INC.	:	

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”). On September 21, 2007, the Commission received from G.S. Materials, Inc. (“GSM”) a letter requesting reopening of a proposed penalty assessment which GSM believes 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 July 19, 2007, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued proposed penalty assessment No. 000122706 to GSM for seven citations that MSHA had issued to GSM during the previous month. GSM states that it did not contest the proposed penalties until August 20, 2007, because it misplaced the papers at the mine site. The Secretary states that case was timely contested, and she has assigned it to a Regional Solicitor’s office for hearing, so the request to reopen should be dismissed.

Having reviewed GSM’s request and the Secretary’s response, we conclude that the proposed assessment at issue has not become a final order of the Commission because GSM timely contested it. We deny GSM’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. *See Lehigh Cement Co.*, 28 FMSHRC 440, 441 (July 2006).

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

Distribution

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