

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

November 2, 2006

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

v.

JIM WALTER RESOURCES, INC.

:  
:  
:  
:  
:  
: Docket No. SE 2007-8  
: A.C. No. 01-01401-87100  
:  
:

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 October 9, 2006, the Commission received from Jim Walter Resources, Inc. (“JWR”) a letter by counsel seeking to reopen a penalty assessment that 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 May 15, 2006, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued a proposed penalty assessment to JWR for Citation No. 7686228. JWR had previously contested the underlying citation, and that proceeding had been stayed by the assigned judge pending issuance of the civil penalty assessment. JWR states that when it received the proposed penalty assessments, it inadvertently omitted to contest the assessment relating to Citation No. 7686228 and paid that assessment along with other assessments relating to citations that JWR had not challenged. JWR states that it became aware of its mistake, when, on September 13, the Secretary moved to dismiss Citation No. 7686228 because JWR had paid the

civil penalty assessment, thereby mooting the contest of the citation. The Secretary states that she does not oppose JWR's request to reopen the penalty assessment.

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).

Having reviewed JWR's request, in the interests of justice, we remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists for JWR's failure to timely contest the penalty proposal and whether relief from the final order should be granted. If it is determined that such relief is appropriate, this case shall proceed 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

---

Michael G. Young, Commissioner

Distribution

Guy R. Hensley, Esq.  
Jim Walter Resources, Inc.  
P.O. Box 133  
Brookwood, AL 35444

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

Thomas A. Grooms, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
618 Church Street, Suite 230  
Nashville, TN 37219

Myra James, Chief  
Office of Civil Penalty Compliance, MSHA  
U.S. Department of Labor  
1100 Wilson Boulevard, 25<sup>th</sup> Floor  
Arlington, VA 22209-3939

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