

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

August 1, 2008

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. SE 2008-589-M
ADMINISTRATION (MSHA)	:	A.C. No. 01-03100-136465
	:	
v.	:	Docket No. SE 2008-590-M
	:	A.C. No. 01-03126-136466
BLOUNT SPRINGS MATERIALS	:	

BEFORE: Duffy, Chairman; Jordan, Young, and Cohen, 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”).¹ On April 17, 2008, the Commission received from Blount Springs Materials (“Blount”) letters seeking to reopen two penalty assessments that had become final orders 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 January 17, 2008, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued two proposed penalty assessments to Blount. Blount sent its contests of the proposed assessments to MSHA on March 21, 2008. On March 27, 2008, MSHA informed Blount that it had missed the 30-day deadline and that the penalties were due. Blount states that it failed to contest the penalty assessments within the required time because of a change in its safety directors. The Secretary states that she does not oppose the reopening of the assessments.

¹ Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers SE 2008-589-M and SE 2008-590-M, both captioned *Blount Springs Materials* and involving similar procedural issues. 29 C.F.R. § 2700.12.

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 Blount’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 Blount’s failure to timely contest the penalty proposals and whether relief from the final orders should be granted. The Chief Administrative Law Judge should obtain from Blount evidence as to the circumstances concerning why the change in personnel resulted in a failure to timely respond to the penalty assessments. 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

Robert F. Cohen, Jr., Commissioner

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