

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW
SUITE 9500
WASHINGTON, DC 20001

August 11, 2005

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. VA 2005-17
v.	:	A.C. No. 44-07048-48293
	:	
HUBBLE MINING COMPANY, LLC	:	

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 28, 2005, Chief Administrative Law Judge Robert J. Lesnick issued a show cause order to Hubble Mining Company, LLC (“Hubble”) stating that it had failed to file an answer to a petition for penalty assessment sent to it by the Secretary of Labor on March 17, 2005, and that Hubble would be found in default if it did not file an answer or show good cause for not doing so within 30 days of the order. On June 20, 2005, Chief Judge Lesnick issued an order finding that Hubble had failed to respond to the show cause order and entering a judgment by default for the Secretary of Labor.

On July 21, 2005, the Commission received from Hubble a motion made by counsel seeking review of Chief Judge Lesnick’s default order. In its motion, Hubble states that before Chief Judge Lesnick entered the default judgment, the company was not represented by counsel. Mot. at 2. The company official handling the matter mistakenly believed that a conference held with MSHA on the citation underlying the proposed penalty at issue was “a hearing on the merits,” and that he was “not required to further participate in the penalty proceedings.” *Id.* The Secretary states that she does not oppose Hubble’s motion.

The judge’s jurisdiction in this matter terminated when his decision was issued on June 20, 2005. 29 C.F.R. § 2700.69(b). Under the Mine Act and the Commission’s procedural rules, relief from a judge’s decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2); 29 C.F.R. § 2700.70(a). If the Commission does not direct review within 40 days of a decision’s issuance, it becomes a final decision of the

Commission. 30 U.S.C. § 823(d)(1). The judge's order became a final decision of the Commission on August 1, 2005.

In evaluating requests to reopen final 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”); *Jim Walter Resources, Inc.*, 15 FMSHRC 782, 787 (May 1993). 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 Hubble's motion, in the interests of justice, we hereby remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists to excuse Hubble's failure to respond to the show cause order, and for further proceedings as appropriate.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

Distribution

Mickey T. Webster, Esq.
Wyatt, Tarrant & Combs, LLP
250 West Main Street, Suite 1600
Lexington, KY 40507

W. Christian Schumann, Esq.
Office of the Solicitor
U.S. Department of Labor
1100 Wilson Blvd., 22nd Floor
Arlington, VA 22209-2296

Chief Administrative Law Judge Robert J. Lesnick
Federal Mine Safety & Health Review Commission
Office of Administrative Law Judges
601 New Jersey Avenue, N.W., Suite 9500
Washington, D.C. 20001-2021