

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW
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August 30, 2006

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. VA 2006-33-M
ADMINISTRATION (MSHA)	:	A.C. No. 44-06600-26884 A
	:	
v.	:	Docket No. VA 2006-34-M
	:	A.C. No. 44-06600-26885 A
	:	
PAUL J. BENNETT,	:	
GLORIA W. HOLMES, and	:	Docket No. VA 2006-35-M
STEVEN K. HANKS, employed by	:	A.C. No. 44-06600-26886 A
BENNETT MINERAL COMPANY	:	

BEFORE: Duffy, Chairman; Jordan, Suboleski, and Young, Commissioners

ORDER

BY THE COMMISSION:

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2000) (“Mine Act”).¹ On July 13, 2006, the Commission received a letter from Bennett Mineral Company sent on behalf of Paul J. Bennett, Jr., Gloria W. Holmes, and Steven K. Hanks, all employees of the company, requesting that the Commission reopen penalty assessments against the employees under section 110(c) of the Mine Act, 30 U.S.C. § 820(c), that had become final orders of the Commission pursuant to section 105(a) of the Act, 30 U.S.C. § 815(a).

Under the Commission’s Procedural Rules, an individual charged under section 110(c) has 30 days following receipt of the proposed penalty assessment within which to notify the Secretary of Labor that he or she wishes to contest the penalty. 29 C.F.R. § 2700.26. If the individual fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 29 C.F.R. § 2700.27.

¹ Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate Docket Numbers VA 2006-33-M, VA 2006-34-M, and VA 2006-35-M, in which all the respondents are employees of Bennett Mineral Company, and which all involve similar procedural issues. 29 C.F.R. § 2700.12.

The Mine Safety and Health Administration (“MSHA”) sent proposed penalty assessments to the respondents in May 2004.² Although the respondents contend that they filed appeals in June 2004 (Letter from Donna M. Rutkowski, HR/Safety Administrator, dated July 12, 2006), these penalties became final orders in June 2004. *See* letters from MSHA to respondents dated June 14, 2006. However, the related penalty proceeding against the operator was dismissed pursuant to an unpublished order issued by Chief Administrative Law Judge Robert J. Lesnick on December 16, 2004. Order of Dismissal, *Bennett Mineral Co.*, Docket No. VA 2004-46-M. The respondents’ letter states that until they received delinquency notices dated mid-June 2006, they believed that all related cases had also been dismissed.

On August 2, 2006, the Secretary filed a response to the employees’ request for relief stating that “[a]fter reviewing the circumstances pertaining to the case[s], the Secretary states that she will not prosecute the case[s] further.” S. Resp. at 1.

Based on the Secretary’s response, it appears that she has in effect terminated the citations against Bennett, Holmes, and Hanks, and we therefore find their motions to reopen moot. *See Black Gold Trucking Co.*, 23 FMSHRC 797 (Aug. 2001).

² The Proposed Penalty Assessments for Holmes and Hanks are dated May 12, 2004. Bennett has stated that he received “a personal citation” from MSHA on May 17, 2004. Bennett Letter to MSHA (June 17, 2004).

Accordingly, the motions to reopen are denied, and these proceedings are dismissed.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

Distribution

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