

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

March 8, 2000

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. WEVA 99-111
	:	A.C. No. 46-08330-03511
MOLLOY MINING, INC.	:	

BEFORE: Jordan, Chairman; Marks, Riley, Verheggen, and Beatty, Commissioners

ORDER

BY: Jordan, Chairman; Marks, Verheggen, and Beatty, Commissioners

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1994) (“Mine Act”). On September 29, 1999, Administrative Law Judge Michael Zielinski issued a Decision Approving Settlement granting a settlement motion filed by the Secretary of Labor which involved civil penalties for six citations issued to Molloy Mining, Inc. (“Molloy Mining”). The Secretary now requests the Commission to modify the judge’s decision to correct certain clerical errors.

On April 7, 1999, the Secretary issued six citations — Citation Nos. 7179500 through 7179505 — to Molloy Mining, alleging various violations of mandatory safety standards. S. (Second) Amended Mot. to Approve Settlement at 1 (Jan. 4, 2000). On July 22, 1999, the Secretary filed a Petition for Assessment of Penalties for the six citations and proposed assessments of \$259 each, or a total assessment of \$1,554. *Id.* at 6. Molloy Mining filed its answer to the Commission on July 29, 1999, denying any violation and contesting the Secretary’s proposed penalties. Op. Answer to S. Petition for Assessment of Civil Penalty. On September 24, 1999, the Secretary filed a motion to approve a settlement agreement reached by the parties, in which Molloy Mining agreed to pay a total of \$1,066 for the six violations. S. Letter dated Sept. 24, 1999. On September 27, the Secretary filed an amended motion to approve settlement requesting correction of the settlement amount from \$1,066 to \$1,174. S. Letter dated Sept. 27, 1999. On September 29, the judge issued his decision approving the settlement and directing Molloy Mining to pay \$1,174. Unpublished Dec. dated Sept. 29, 1999. On January 4, 2000, the Secretary filed a second amended motion to approve settlement, requesting correction of the settlement amount back to the original total of \$1,066. S. Letter dated Jan. 4, 2000. The Secretary explained that the penalties associated with three citations — Citation Nos. 7179503,

7179504, and 7179505 — were incorrectly set forth as \$295 each, rather than \$259, making the correct total settlement amount \$1,066, as originally provided in the Secretary’s first motion. *Id.* The judge responded to the Secretary’s second amended motion with a letter stating that he no longer had jurisdiction of the case because once he issued his decision on the matter, it became final 40 days after its issuance. Letter from Judge Zielinski dated Jan. 10, 2000.

The judge’s jurisdiction over this case terminated when his decision approving settlement was issued on September 29, 1999. 29 C.F.R. § 2700.69(b). 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). Molloy Mining’s motion was received by the Commission on January 6, 2000, almost two months after the judge’s decision became final. Under these circumstances, we treat Molloy Mining’s motion as a late-filed petition for discretionary review requesting amendment of a final Commission decision. *See General Chemical Corp.*, 18 FMSHRC 704, 705 (May 1996).

A final Commission judgment or order may be reopened under Fed. R. Civ. P. 60(b)(1) & (6) in circumstances such as mistake, inadvertence, excusable neglect, or other reasons justifying relief. 29 C.F.R. § 2700.1(b) (Federal Rules of Civil Procedure apply “so far as practicable” in the absence of applicable Commission rules); e.g., *Lloyd Logging, Inc.*, 13 FMSHRC 781, 782 (May 1991). The Secretary erred in stating the penalty amount for three citations in her motion to approve settlement, mistakenly listing the penalties associated with the citations as \$295 each, instead of the correct amount of \$259, and setting forth an incorrect total settlement amount of \$1,174. The judge’s decision approving that settlement agreement incorporates those clerical errors. The Secretary requests that the settlement decision be amended to reflect the correct penalty amount of \$259 for each of the three citations and a total settlement of \$1,066. Here, the clerical errors incorporated in the judge’s decision approving settlement amount to mistake under Rule 60(b).

Accordingly, we reopen the final decision, and grant the Secretary's motion to correct the clerical errors set forth in the judge's decision approving settlement.¹ See *General Chemical Corp.*, 18 FMSHRC at 705 (amending judge's dismissal order where the judge mistakenly left out a citation in the caption and body of his order); *Martin Marietta Aggregates*, 16 FMSHRC 189, 190 (Feb. 1994) (amending judge's decision approving settlement to reflect correct penalty amount agreed to by the parties). On this date, we separately issue an amended decision approving settlement consistent with this order.

Mary Lu Jordan, Chairman

Marc Lincoln Marks, Commissioner

Theodore F. Verheggen, Commissioner

Robert H. Beatty, Jr., Commissioner

¹ Commissioner Riley concludes that, because the judge committed no error in this matter, this case should be remanded to the judge to allow him to correct the Secretary's clerical error.

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MOLLOY MINING, INC.

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Docket No. WEVA 99-111
A.C. No. 46-08330-03511

BEFORE: Jordan, Chairman; Marks, Riley, Verheggen, and Beatty, Commissioners

AMENDED DECISION APPROVING SETTLEMENT

BY: Jordan, Chairman; Marks, Verheggen, and Beatty, Commissioners

The Secretary of Labor has filed an amended motion to approve settlement in this civil penalty proceeding. The motion is unopposed. The motion having been considered, and good cause appearing:

Wherefore, it is ordered that the Decision Approving Settlement issued September 29, 1999, be amended to reflect that the proposed penalty assessment for each of the six citations, Citation Nos. 7179500 through 7179505, issued to Molloy Mining, Inc., is \$259 and that the parties agreed to settle Citation Nos. 7179503, 7179504, and 7179505 for \$259 each, for a total payment, by Molloy Mining, Inc., of \$1,066.¹

Mary Lu Jordan, Chairman

Marc Lincoln Marks, Commissioner

Theodore F. Verheggen, Commissioner

Robert H. Beatty, Jr., Commissioner

¹ In a separate order issued by the Commission on this date, Commissioner Riley concluded that, because the judge committed no error, this case should be remanded to the judge to allow him to correct the Secretary's clerical error.

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