

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

February 7, 2001

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket Nos. WEST 2000-617-M
	:	WEST 2000-618-M
ECLIPSE C CORPORATION	:	

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

ORDER

BY: Jordan, Chairman; Beatty, Commissioner

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994) (“Mine Act”). On September 8, 2000, the Commission received from Eclipse C Corporation (“Eclipse”) a request to reopen 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). The Secretary of Labor does not oppose the motion for relief filed by Eclipse.

Under section 105(a) of the Mine Act, an operator has 30 days following receipt of the Secretary of Labor’s proposed penalty assessment within which to notify the Secretary that it wishes to contest the proposed penalty. 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).

In its motion, Eclipse, which is unrepresented by counsel, asserts that it filed a hearing request to contest the proposed penalties, one which is the subject of Docket No. WEST 2000-468-M, and mistakenly believed that its request applied also to the proposed assessments which are the subjects of Docket Nos. WEST 2000-617-M and 2000-618-M. Mot. Eclipse explains that “all the tickets were given at one time.” *Id.* It requests that the proposed assessments for all three dockets

be consolidated into one proceeding. *Id.* In addition, Eclipse requests that the Commission reopen the final orders. *Id.*

We have held that, in appropriate circumstances and pursuant to Rule 60(b), we possess jurisdiction to reopen uncontested assessments that have become final under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993); *Rocky Hollow Coal Co.*, 16 FMSHRC 1931, 1932 (Sept. 1994). We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of adequate or good cause for the failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Preparation Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995). In accordance with Rule 60(b)(1), we previously have afforded a party relief from a final order of the Commission on the basis of inadvertence or mistake. *See Gen. Chem. Corp.*, 18 FMSHRC 704, 705 (May 1996); *Kinross DeLamar Mining Co.*, 18 FMSHRC 1590, 1591-92 (Sept. 1996); *Stillwater Mining Co.*, 19 FMSHRC 1021, 1022-23 (June 1997).

On the basis of the present record, we are unable to evaluate the merits of Eclipse's position. In the interest of justice, we remand the matter for assignment to a judge to determine whether Eclipse has met the criteria for relief under Rule 60(b). *See, e.g., Ogden Constructors, Inc.*, 22 FMSHRC 5, 7 (Jan. 2000) (remanding to a judge where the operator failed to timely submit a hearing request due to a mistaken belief that no action was necessary because the citation was the subject of an ongoing MSHA investigation); *M & Y Services, Inc.*, 19 FMSHRC 670, 671-72 (Apr. 1997) (remanding to a judge where the operator failed to timely submit a hearing request because it allegedly did not receive assistance regarding the proper contest procedure until the deadline for filing had passed); *Rivco Dredging Corp.*, 10 FMSHRC 624, 625 (May 1988) (remanding to the judge where due to a misunderstanding of Commission procedure, the operator filed a notice of contest of the citation, but failed to separately file a hearing request to contest the proposed assessment). If the judge determines 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.

Mary Lu Jordan, Chairman

Robert H. Beatty, Jr., Commissioner

Commissioners Riley and Verheggen, concurring in result:

We would grant the operator's request for relief here, because the Secretary does not oppose and the operator has offered a sufficient explanation for its failure to timely respond. However, in order to avoid the effect of an evenly divided decision, we join in remanding the case to allow the judge to consider whether the operator has met the criteria for relief under Commission Procedural Rule 60(b), 29 C.F.R. § 2700.60(b). *See Pa. Elec. Co.*, 12 FMSHRC 1562, 1563-65 (Aug. 1990), *aff'd on other grounds*, 969 F.2d 1501 (3d Cir. 1992) (providing that the effect of a split Commission decision is to leave standing disposition from which appeal has been sought).

James C. Riley, Commissioner

Theodore F. Verheggen, Commissioner

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