

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

April 15, 2004

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEST 2004-130-M
v.	:	A.C. No. 42-00155-12176
	:	
MOAB SALT, LLC.	:	

BEFORE: Duffy, Chairman; Beatty, 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. (1994) (“Mine Act”). On January 5, 2004, the Commission received from Moab Salt, LLC. (“Moab Salt”) a motion made by counsel to reopen a penalty assessment that had become a final order 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).

In its motion, Moab Salt requests relief from the final order. Mot. Moab Salt states that on August 8, 2003, it filed a Notice of Contest challenging Order No. 7907295 as well as three other citations and orders presently before the Commission. *Id.* at 1-2. The contest proceedings were assigned to Administrative Law Judge Richard Manning. *Id.* On October 8, 2003, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) modified Order No. 7907295 to a citation issued under Mine Act section 104(a), 30 U.S.C. § 814(a). On October 30, 2003, MSHA issued a proposed penalty for Citation No. 7907295, in the amount of \$60.00 (A.C. No. 42-00155-12176). *Id.* at 2. Moab Salt asserts that as a result of internal misunderstanding and confusion over the status of the citation at issue, on or about December 3, 2003, it submitted

a check in the amount of \$60.00 as payment for Citation No. 7907295. *Id.* Moab Salt claims that its intent to contest Citation No. 7907295 is clear, as it filed a pre-penalty Notice of Contest. *Id.* at 2. It did not attach any supporting documentation to its motion. The Secretary states that she does not oppose Moab Salt's request for relief.

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.

Having reviewed Moab Salt's motion, in the interests of justice, we remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists for Moab Salt's failure to timely contest the penalty proposal for Citation No. 7907295 and whether relief from the final order should be granted. 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.

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Michael F. Duffy, Chairman

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Robert H. Beatty, Jr., Commissioner

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Mary Lu Jordan, Commissioner

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Stanley C. Suboleski, Commissioner

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Michael G. Young, Commissioner

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