

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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March 19, 2004

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEST 2004-140-M
v.	:	Case No. 24-01490-10041
	:	
STILLWATER MINING COMPANY	:	

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 20, 2004, the Commission received from Stillwater Mining Company (“Stillwater”) 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).

We have held, however, 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. 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).

On October 27, 2002, the Department of Labor's Mine Safety and Health Administration ("MSHA") issued to Stillwater Citation Nos. 6269379 and 6269380. On October 7, 2003, MSHA issued a proposed penalty assessment (Case No. 000010041) in the amount of \$4,855 for 22 violations, including the subject citations, to Stillwater in Nye, Montana. In its motion, Stillwater states at the time that it received MSHA's proposed assessment, the employee responsible for handling the contest and payment of penalties had recently resigned. Mot. at 2. Stillwater also states that within thirty days after it received the penalty proposal, Steve Wood, Stillwater's Corporate Safety Director, submitted a contest of the proposed assessments for the subject citations and payment of the remaining assessments to MSHA's regional office in Pittsburgh, Pennsylvania. *Id.* Stillwater explains that it failed to timely contest the proposed assessment because Wood was not familiar with the procedure for contesting proposed assessments and sent the contest to MSHA's regional office, instead of MSHA's Civil Penalty Compliance Office in Arlington, Virginia as required. *Id.* Stillwater further states that it became aware of its mistake only after the thirty-day filing period had expired when its counsel reviewed MSHA's Data Retrieval System. *Id.* Stillwater attached to its motion the affidavit of Steve Wood, and copies of a letter from Steve Wood to MSHA, a check to MSHA dated October 24, 2003, and MSHA's proposed assessment. The Secretary states that she does not oppose Stillwater's request for relief.

Having reviewed Stillwater'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 Stillwater's failure to timely contest the penalty proposal 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.

Michael F. Duffy, Chairman

Robert H. Beatty, Jr., Commissioner

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

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