

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

March 1, 2005

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

NATIONAL KING COAL, LLC

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Docket No. WEST 2005-9
A.C. No. 05-00266-33560

BEFORE: Duffy, Chairman; 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. (2000) (“Mine Act”). On October 6, 2004, the Commission received from National King Coal, LLC (“NKC”) 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).

On August 3, 2004, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued a proposed penalty assessment (A.C. No. 05-00266-33560) to NKC’s King Coal Mine for Order No. 7631533 and Citation Nos. 7631303 and 7631304. In its motion, NKC states that on June 4, 2004, it contested Order No. 7631533, which is the subject of Docket No. WEST 2004-350-R, and is stayed before Judge Manning. Mot. at 2. NKC asserts that, upon receipt of the proposed assessment, the penalties were mistakenly paid and, as a consequence, NKC failed to timely request a hearing. *Id.* at 2-3. NKC explains that personnel in its accounting department inadvertently paid the penalties without management’s authorization and that it had intended to contest all three penalties. *Id.* at 2. NKC did not attach any supporting documentation to its motion. The Secretary states that she does not oppose NKC’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 NKC’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 NKC’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

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

Distribution

Karen L. Johnson, Esq.
Jackson Kelly, PLLC
1099 18th Street, Suite 2150
Denver, CO 80202

W. Christian Schumann, Esq.
Office of the Solicitor
U.S. Department of Labor
1100 Wilson Blvd., 22nd Floor
Arlington, VA 22209

Chief Administrative Law Judge Robert J. Lesnick
Federal Mine Safety and Health Review Commission
601 New Jersey Ave., N.W., Suite 9500
Washington, D.C. 20001