

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW
SUITE 9500
WASHINGTON, DC 20001

February 1, 2007

SECRETARY OF LABOR,	:	Docket No. WEST 2007-134-M
MINE SAFETY AND HEALTH	:	A.C. No. 10-02063-77188
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEST 2007-135-M
v.	:	A.C. No. 10-02063-87813
	:	
GRANGEVILLE TRANSIT MIX, INC.	:	Docket No. WEST 2007-136-M
	:	A.C. No. 10-02063-93037
	:	
	:	Docket No. WEST 2007-137-M
	:	A.C. No. 10-02063-95511

BEFORE: Duffy, Chairman; Jordan 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”).¹ On December 14, 2006, the Commission received a letter from Grangeville Transit Mix, Inc. (“Grangeville”) requesting that the Commission reopen four 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).

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).

¹ Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers WEST 2007-134-M, WEST 2007-135-M, WEST 2007-136-M, and WEST 2007-137-M, all captioned *Grangeville Transit Mix, Inc.*, and all involving similar procedural issues. 29 C.F.R. § 2700.12.

Between January 2006 and August 2006, the Department of Labor's Mine Safety and Health Administration ("MSHA") sent four separate proposed penalty assessments to the operator. None of the proposed assessments was timely contested. Each of the assessments therefore became a final Commission order.

Grangeville's original letter of December 14, 2006, attached only one of the four assessments that had become final Commission orders, and with respect to that assessment (A.C. No. 10-02063-95511), Grangeville stated it had tried to timely contest the assessment, but had sent the contest form to the wrong address. The Secretary responded to the letter by stating that, while she did not oppose reopening of that assessment, she could not take a position on the reopening of the other three assessments until Grangeville explained why it believes reopening of those three assessments is also warranted.

Grangeville subsequently submitted a second letter, dated January 14, 2007, stating that its foreman did not receive some of the citations and proposed penalties at issue in the four assessments, and that it misunderstood the MSHA enforcement procedures in this instance. In response, the Secretary now states that she does not oppose Grangeville's request to reopen all four penalty assessments.

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. 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).

Having reviewed Grangeville's request, in the interests of justice, we remand these matters to the Chief Administrative Law Judge for a determination of whether good cause exists for Grangeville's failure to timely contest the penalty proposals and whether relief from the final orders should be granted. If it is determined that such relief is appropriate, these cases 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

Michael G. Young, Commissioner

Distribution

Mr. Max Nuxoll
Grangeville Transit Mix
P.O. Box 175
Grangeville, ID 83530

W. Christian Schumann, Esq.
Office of the Solicitor
U.S. Department of Labor
1100 Wilson Blvd., 22nd Floor
Arlington, VA 22209-2296

Chief Administrative Law Judge Robert J. Lesnick
Federal Mine Safety & Health Review Commission
601 New Jersey Avenue, N.W., Suite 9500
Washington, D.C. 20001-2021