FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

May 4, 2007

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

v. : Docket No. WEST 2007-363-M

A.C. No. 02-00135-106324-MWX

MARCO CRANE & RIGGING : COMPANY :

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"). On April 9, 2007, the Commission received from Marco Crane & Rigging Company ("Marco") a motion from its counsel requesting 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).

On December 20, 2006, the Department of Labor's Mine Safety and Health Administration ("MSHA") issued proposed penalty assessment No. 106324 to Marco. Marco did not contest the assessment, and on March 22, 2007, MSHA sent Marco a notice that the penalty in the assessment was delinquent. Marco asserts that the March 22 notice was the first notification that it received of the penalty assessment. On that basis, Marco requests that the Commission reopen the proceeding. The Secretary states that she does not oppose Marco's request to reopen the penalty assessment.

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) 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 Marco's request, in the interests of justice, we remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists for Marco'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.

Mich	ael F.	Duffy,	Chairr	nan		
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Distribution

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