

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20001

May 11, 2007

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

v.

GEORGE REED, INC.

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Docket No. WEST 2007-367-M
A.C. No. 04-03126-107725

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 12, 2007, the Commission received from George Reed, Inc. (“Reed”) a letter 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 August 30, 2006, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued Citation Nos. 6387811 and 6387812 to Reed. MSHA subsequently sent the proposed penalty assessment covering those citations to Reed at its address of record indicated on the MSHA Legal Identity Report Form 2000-7. Reed did not contest the assessment in a timely manner. Reed asserts that, prior to the issuance of the proposed penalty assessment, it requested that MSHA send to its counsel copies of all correspondence with regard to the citations. Reed also states that, at the same time, it informed MSHA of its intent to contest the citations and related proposed assessments. On those bases, Reed requests that the Commission reopen the proceeding. Although the Secretary does not oppose the request to reopen, she notes for the record that all proposed penalty assessments are sent by MSHA’s computerized

assessment system and that all assessments are sent to the operator's address of record on the legal identity form.

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 Reed'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 Reed'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

Michael G. Young, Commissioner

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