

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

April 4, 2008

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. WEST 2008-257
	:	A.C. No. 05-03836-123538
v.	:	
	:	
TWENTYMILE COAL 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 December 10, 2007, the Commission received from Twentymile Coal Company (“Twentymile”) a letter requesting that the Commission 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 July 31, 2007, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued Proposed Assessment No. 000123538 to Twentymile, proposing penalties for 33 citations and orders that previously had been issued to the company’s Foidel Creek Mine. Twentymile states that the mine promptly processed and forwarded the assessment to Twentymile’s corporate office for payment, but that due to a processing error, the 26 penalties that Twentymile was not contesting were not paid until October 2007. Twentymile requests reopening so that it can contest the other seven penalties. The Secretary states that she does not oppose Twentymile’s request to reopen.

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).

While Twentymile’s request for relief addresses the mistake that led to the late payment of the uncontested penalties, it does not explain the company’s separate failure to return the assessment form to MSHA in order to contest the seven penalties that it states it intended to contest. Consequently, we deny Twentymile’s request without prejudice. *See Marsh Coal Co.*, 28 FMSHRC 473, 475 (July 2006).

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

Distribution:

Lisa French, Safety Assistant, Peabody Energy/ Twentymile Coal Co., 29515 Routt County Rd., #27, Oak Creek, CO 80467

W. Christian Schumann, Esq., Office of the Solicitor, U.S. Department of Labor, 1100 Wilson Blvd., Room 2220, Arlington, VA 22209-2296

Myra James, Chief, Office of Civil Penalty Compliance, MSHA, U.S. Dept. Of Labor, 1100 Wilson Blvd., 25th Floor, Arlington, VA 22209-3939

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