FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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April 10, 2008

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)	:	
	:	Docket No. WEST 2008-350-M
v.	:	A.C. No. 45-03175-127980
	:	
IRON MOUNTAIN QUARRY, LLC	:	

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 January 23, 2008, the Commission received from Iron Mountain Quarry, LLC ("Iron Mountain") a letter 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).

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 October 30, 2007, the Department of Labor's Mine Safety and Health Administration ("MSHA") issued proposed penalty assessment No. 000130280 to Iron Mountain proposing civil penalties for six citations that had been issued to Iron Mountain on August 23, 2007. Iron Mountain asserts that it timely contested those proposed penalties. The operator states that it subsequently received a notice from MSHA stating that Iron Mountain was delinquent in paying the civil penalty associated with proposed penalty assessment No. 000127980. The operator states that, upon further investigation, it discovered that Penalty Assessment No. 000127980 set forth a proposed civil penalty for Citation No. 7981307, also issued on August 23, 2007. It submits that it intended to contest Citation No. 7981307 but that it has no record of having received Proposed Assessment No. 000127980. Iron Mountain explains that if it had, in fact, received the proposed penalty assessment, its failure to contest the penalty associated with

Citation No. 7981307 was due to a mistake. The Secretary states that she does not oppose Iron Mountain's request to reopen. For clarity, the Secretary attached a copy of Proposed Assessment No. 000127980 (dated October 2, 2007), and a tracking report showing delivery.

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. 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 Iron Mountain'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 Iron Mountain'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.

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Michael F. Duffy, Chairman

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Mary Lu Jordan, Commissioner

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Michael G. Young, Commissioner

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