

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

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WASHINGTON, DC 20001

July 16, 2008

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. WEST 2008-773
	:	A.C. No. 42-01890-135225
v.	:	
	:	
CANYON FUEL COMPANY, LLC	:	

BEFORE: Duffy, Chairman; Jordan, Young, and Cohen, 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 2, 2008, the Commission received from Canyon Fuel Company, LLC (“Canyon”) a motion by counsel seeking 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 July 19, 2007, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued Order No. 7287633 to Canyon after a regular safety inspection. Canyon filed a notice of contest of the order, which has been assigned Docket No. WEST 2007-739-R. On

January 3, 2008, MSHA issued an assessment covering the order with a proposed penalty of \$27,959. In its motion, Canyon states that its safety manager indicated to his administrative assistant that the penalty for Order No. 7287633 should not be paid but “overlooked mailing” the contest of the penalty to MSHA. In March, Canyon requested a copy of the Secretary’s Petition for Assessment of Penalty and learned that no penalty contest had been filed.

In response, the Secretary states that she does not oppose Canyon’s request to reopen. However, the Secretary notes that Canyon recently claimed mistake or inadvertence as the basis for seeking to reopen an assessment of \$59,392, which had become final. *See Canyon Fuel Co.*, 29 FMSHRC 987 (Dec. 2007). This matter is pending before the Chief Administrative Law Judge.

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 Canyon's request and the Secretary's response, in the interests of justice, we remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists for Canyon'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

Robert F. Cohen, Jr., Commissioner

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