

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW  
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WASHINGTON, DC 20001

September 15, 2004

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEVA 2004-191
v.	:	A.C. No. 46-05317-19959 BJS
	:	
HOFFMANN, INC.	:	

BEFORE: Duffy, Chairman; Jordan, Suboleski, 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. (1994) (“Mine Act”). On July 21, 2004, the Commission received from Hoffmann, Inc. (“Hoffmann”) a motion 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).

On September 22, 2003, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued Citation No. 3577265 to the Goals Preparation Plant of Hoffman, Inc. (“Hoffmann”). The company timely contested the citation. When MSHA subsequently proposed a penalty for Citation No. 3577265, Hoffmann paid it. The company now contends that it made the payment inadvertently, explaining that the penalty was included among proposed penalties for other uncontested citations, and that its accounting department mistakenly paid all of the proposed penalties. Mot. at 2. Hoffmann asserts that it had always intended to contest the validity of Citation No. 3577265, and that, but for its administrative error, it would retain the right to proceed with its contest. *Id.*; Aff. of Clinton T. Church. The Secretary states that she does not oppose Hoffmann’s Motion 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.

Having reviewed Hoffmann’s submissions, in the interests of justice, we remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists for Hoffmann’s inadvertent payment 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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Stanley C. Suboleski, Commissioner

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Michael G. Young, Commissioner

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