

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW
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June 22, 2004

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. WEVA 2004-91
ADMINISTRATION (MSHA)	:	A.C. No. 46-05295-13102
	:	
v.	:	
	:	
EASTERN ASSOCIATED COAL	:	
CORPORATION	:	

BEFORE: Duffy, Chairman; Beatty, Jordan, Suboleski, and Young, Commissioners

ORDER

BY: Duffy, Chairman; Beatty, Suboleski, and Young, Commissioners

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994) (“Mine Act”). On March 17, 2004, the Commission received from Eastern Associated Coal Corporation (“Eastern”) a motion made by counsel to reopen penalty assessments that had become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

On November 12, 2003, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued proposed penalty assessments (A.C. No. 46-05295-13102) to Eastern. In its motion, Eastern states that on September 9, 2003, a Notice of Contest of Proposed Assessments was filed with the MSHA Civil Penalty Compliance Office. Mot. at 1.¹ Eastern also states that on December 16, 2003, its attorney wrote a letter to the MSHA Payment Office

¹ We note the discrepancy between the date of the proposed penalty assessment (November 12, 2003) and the date that Eastern alleges it filed a notice of contest of the penalties (September 9, 2003).

stating that the payment made for seven citations was in error.² *Id.*; Ex. A. In this letter, he requested a refund for the penalty amount that had mistakenly been paid. Mot. at 1; Ex. A. Eastern further states that the payments were mistakenly made due to a clerical error. Mot. at 2. The Secretary states that she does not oppose Eastern's request for relief.

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.

² In its motion, Eastern asks the Commission to reopen proceedings on eight referenced citations. One of them, Citation No. 4192110, does not appear on the proposed penalty assessment Eastern attached to its motion, nor is it referenced in the letter sent to MSHA by Eastern's counsel. Records indicate that this citation has been vacated. Therefore, it is not properly before us, and is not included within the scope of this order.

Having reviewed Eastern's motion, in the interests of justice, we remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists for Eastern's inadvertent payment of the penalties 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

Robert H. Beatty, Jr., Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

Commissioner Jordan, dissenting:

I would deny the operator's request to reopen these proceedings. Although the proposed assessments in this case were not issued until November 12, 2003, the operator, through counsel, mistakenly asserts that it filed a contest of the proposed assessments with the MSHA Civil Penalty Compliance Office on September 9, 2003. Mot.at 1. Moreover, in one of the proceedings for which the operator requests relief, the underlying citation was vacated. Slip op. at 2. In light of this confusing submission, I do not believe that the assertion from the operator's attorneys that the penalties were paid in error warrants relief.

Mary Lu Jordan, Commissioner

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