

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

August 9, 2005

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. WEVA 2005-157
ADMINISTRATION (MSHA)	:	A.C. No. 46-08913-46657
	:	
v.	:	Docket No. WEVA 2005-158
	:	A.C. No. 46-08913-50525
MOUNTAIN EDGE MINING, 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. (2000) (“Mine Act”).<sup>1</sup> On June 22, 2005, the Commission received from Mountain Edge Mining, Inc. (“Mountain Edge”) a letter requesting that the Commission reopen two 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).

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 December 28, 2004 and February 17, 2005, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued to Mountain Edge the two proposed penalty assessments at issue. In its letter, Mountain Edge states that along with partial payments for the proposed penalties, the company thought it had included forms indicating it wished to contest several citations and orders included in the proposed assessments. The company has been

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<sup>1</sup> Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers WEST 2005-157 and WEST 2005-158, both captioned *Mountain Edge Mining, Inc.* and both involving similar issues. 29 C.F.R. § 2700.12.

informed by MSHA however, that the agency never received the contest forms. The Secretary states that she does not oppose Mountain Edge'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. 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 Mountain Edge's letter, in the interests of justice, we remand these matters to the Chief Administrative Law Judge for a determination of whether good cause exists for Mountain Edge's failure to timely contest the penalty proposals and whether relief from the final orders should be granted. If it is determined that such relief is appropriate, these cases 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

Distribution

Douglas M. Epling, President  
Mountain Edge Mining, Inc.  
P.O. Box 2226  
Beckley, WV 25802

W. Christian Schumann, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
1100 Wilson Blvd., 22<sup>nd</sup> Floor  
Arlington, VA 22209-2296

Chief Administrative Law Judge Robert J. Lesnick  
Federal Mine Safety & Health Review Commission  
Office of Administrative Law Judges  
601 New Jersey Avenue, N.W., Suite 9500  
Washington, D.C. 20001-2021