

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

May 24, 2006

|                              |   |                          |
|------------------------------|---|--------------------------|
| SECRETARY OF LABOR,          | : |                          |
| MINE SAFETY AND HEALTH       | : |                          |
| ADMINISTRATION (MSHA)        | : | Docket No. WEVA 2006-310 |
|                              | : | A.C. No. 46-08224-61570  |
| v.                           | : |                          |
|                              | : |                          |
| NORTH STAR CONTRACTORS, INC. | : |                          |

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

ORDER

BY: Duffy, Chairman; Suboleski and Young, Commissioners

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 6, 2006, the Commission received a letter from the secretary and treasurer of North Star Contractors, Inc. (“North Star”) requesting that the Commission reopen a penalty assessment of \$32,500.00 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 12, 2005, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued to North Star the proposed penalty assessment at issue. In its letter, North Star addresses the merits of the alleged violations underlying the proposed assessment. Although the company offers no explanation for its failure to timely contest the proposed assessment, it states that “we do get behind at times [in paying penalties] due to lack of profit and financial delays.” The company also asserts that the penalties at issue “seem very unfair and unreasonable.” The Secretary states that North Star “identifies no grounds for requesting reopening of the penalty assessments in question,” and requests that the Commission direct North Star to provide a detailed explanation of why this matter should be reopened.

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 North Star’s letter, we agree with the Secretary that North Star must provide an explanation as to why reopening this matter is warranted.<sup>1</sup> Accordingly, in the interests of justice, we remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists for North Star’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

---

Stanley C. Suboleski, Commissioner

---

Michael G. Young, Commissioner

---

<sup>1</sup> The Commission also received from North Star a letter dated April 26, 2006, which again addresses the merits of the proposed penalty assessment at issue, but provides no explanation for its failure to timely respond.

Commissioner Jordan, dissenting:

I would deny the operator's request for relief from the final order. Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, we have previously afforded a party relief from a final order on the basis of inadvertence or mistake. Slip op. at 2. However, North Star has failed to provide any explanation to justify its failure to timely contest the proposed penalty assessment. *See Tanglewood Energy, Inc.*, 17 FMSHRC 1105, 1107 (July 1995) (denying request to reopen final Commission order where operator failed to set forth grounds justifying relief). Accordingly, I find no grounds upon which relief could be granted in this case, and would deny the company's request and dismiss these proceedings without prejudice.

---

Mary Lu Jordan, Commissioner

Distribution

Carl Kirk, Sec./Treas.  
North Star Contractors, Inc.  
29501 Mayo Trail  
Catlettsburg, KY 41129  
(by certified mail)

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  
601 New Jersey Avenue, N.W., Suite 9500  
Washington, D.C. 20001-2021