

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20001

August 2, 2006

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. WEVA 2006-769
	:	A.C. No. 46-01436-78898
v.	:	
	:	
CONSOL ENERGY, 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”). On July 7, 2006, the Commission received from Consol Energy, Inc. (“Consol”) a motion made 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 July 19, 2005, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued Citation Nos. 7124679 and 7124684 to Consol’s Shoemaker Mine. Mot. at 1. The company timely contested both citations. The contest proceedings are currently on stay before Commission Administrative Law Judge Michael E. Zielinski. *Id.* (citing Docket Nos. WEVA 2005-211-R and WEVA 2005-213-R). When MSHA subsequently proposed penalties for the contested citations in Proposed Penalty Assessment No. 46-01436-78898, Consol paid them. Mot. at 1-2. The company now contends that it made the payments inadvertently. *Id.* at 2. The Secretary states that she does not oppose Consol’s motion.

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 Consol’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 Consol’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.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

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