

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

February 27, 2006

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. WEVA 2006-86
	:	A.C. No. 46-08798-72387
v.	:	
	:	
IO COAL COMPANY, 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 February 6, 2006, the Commission received from IO Coal Company, Inc. (“IO Coal”) 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 September 16, 2005, IO Coal timely contested Citation No. 7240550, issued by the Department of Labor’s Mine Safety and Health Administration (“MSHA”) to IO Coal’s Europa Mine. Mot. at 1. The contest proceeding is currently before Commission Administrative Law Judge Avram Weisberger. *Id.* at 1-2 (citing Docket No. WEVA 2005-235-R). When MSHA subsequently proposed a penalty for Citation No. 7240550, IO Coal paid it along with 33 other penalty assessments. Mot. at 2. The company now contends that it made the payment inadvertently, and asserts that it had always intended to contest both the validity of the citation and any related penalty. *Id.*; Aff. of Timothy Beckner. The Secretary states that she does not oppose IO Coal’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.

Having reviewed IO Coal’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 IO Coal’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.

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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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