

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

December 21, 2006

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
	:	
v.	:	Docket No. WEVA 2007-144
	:	A.C. No. 46-01456-85356
EASTERN ASSOCIATED COAL, LLC	:	

BEFORE: Duffy, Chairman; Jordan 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 November 13, 2006, the Commission received from Eastern Associated Coal, LLC (“Eastern”) a motion from its counsel requesting 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).

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 March 9, 2006, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued three citations to Eastern. Eastern contested those citations, and that proceeding was stayed by the assigned judge. MSHA subsequently sent Eastern a proposed penalty assessment relating to the citations. The company offers no explanation for its failure to timely contest that proposed assessment. The Secretary filed a response to Eastern’s motion to reopen in which she responds that a party must provide an explanation that constitutes adequate or good cause for its failure to take required action, but that Eastern identifies no grounds for requesting that the proposed penalty assessment 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) 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.

Because Eastern’s request for relief does not explain the company’s failure to contest the proposed assessment, and is not based on any of the grounds for relief set forth in Rule 60(b), we hereby deny the request for relief without prejudice. *See Marsh Coal Co.*, 28 FMSHRC 473, 475 (July 2006).

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Michael F. Duffy, Chairman

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Mary Lu Jordan, Commissioner

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Michael G. Young, Commissioner

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