

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW

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WASHINGTON, DC 20001

May 4, 2007

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
	:	
v.	:	Docket No. WEVA 2007-378
	:	A.C. No. 46-01271-105367
EASTERN ASSOCIATED COAL	:	A.C. No. 46-01271-103170
CORP.	:	

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 April 10, 2007, the Commission received from Eastern Associated Coal Corp. (“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 August 16, 2006, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued Order No. 7256017 to Eastern. Eastern contested the order, and that proceeding was stayed by the assigned judge. On November 14, 2006, MSHA sent Eastern a proposed penalty assessment relating to the order. On December 11, 2006, Eastern sent to MSHA the assessment form indicating the contest of the proposed assessment for Order No. 7256017. Eastern then received a letter from MSHA stating that the order had been assessed in error and that a new assessment would be issued. On December 12, 2006, MSHA sent a second proposed penalty assessment covering Order No. 7256017. Eastern asserts that it failed to file a second contest after it received the second assessment because the second assessment was

inadvertently misplaced. Eastern further alleges that failure to file the second penalty contest was also a result of miscommunication within the operator's organization. The Secretary states that she does not oppose Eastern's request to reopen the penalty assessment.

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.

Having reviewed Eastern's request, in the interests of justice, we remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists for Eastern's failure to timely contest the second 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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Michael G. Young, Commissioner

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