

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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December 20, 2006

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. WEVA 2007-40
ADMINISTRATION (MSHA)	:	A.C. No. 46-08801-84568
	:	Docket No. WEVA 2007-41
	:	A.C. No. 46-08801-82207
	:	Docket No. WEVA 2007-42
	:	A.C. No. 46-08801-94139
v.	:	Docket No. WEVA 2007-43
	:	A.C. No. 46-08801-87351
	:	Docket No. WEVA 2007-44
	:	A.C. No. 46-08801-90231
ARACOMA COAL COMPANY	:	Docket No. WEVA 2007-45
	:	A.C. No. 46-08801-90239

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”).¹ On October 16, 2006, the Commission received from Aracoma Coal Company (“Aracoma”) a motion from counsel seeking to reopen penalty assessments that had become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

¹ Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate Docket Numbers WEVA 2007-40, WEVA 2007-41, WEVA 2007-42, WEVA 2007-43, WEVA 2007-44, and WEVA 2007-45, all captioned Aracoma Coal Company and all involving similar procedural issues. 29 C.F.R. § 2700.12.

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).

In February and March, 2006, the Department of Labor's Mine Safety and Health Administration ("MSHA") issued approximately 220 citations to Aracoma as a result of an investigation of a fatal mine fire. Aracoma timely filed notices of contest of the citations, and the cases were stayed by the assigned judge. Aracoma states that, sometime thereafter, its safety director mistakenly paid the proposed assessments for approximately 75 citations that Aracoma previously had contested and did not intend to pay. By letters dated July 13 and July 20, 2006, Aracoma notified the Secretary that it had paid the penalties by mistake. The Secretary states that she does not oppose Aracoma's request to reopen the penalty assessments.

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 Aracoma'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 Aracoma's failure to timely contest the penalty proposals and whether relief from the final order should be granted.² 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 2700.³

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

² On October 6, 2006, the judge assigned to the related contests of the underlying citations dismissed those contests after Aracoma failed to comply with an order requiring it to move to reopen the instant penalty proceedings by September 25, 2006. Aracoma now requests in this proceeding that the Commission also reopen those contest cases. Request to Reopen Penalty Assessments at 2, n.2. We decline to do so. To appeal the judge's decision in the underlying citation contests, Aracoma was obliged to timely file a petition for discretionary review. 30 U.S.C. § 823 (d)(2)(A) (ii); Commission Procedural Rule 70. This it failed to do. In any event, if these penalty proceedings are reopened, Aracoma will still have the right to challenge the fact of violation and any special findings contained in the underlying citations. Commission Procedural Rule 21(b).

³ Because Aracoma has not included with its motion to reopen the six penalty assessments that it seeks to reopen, or a precise listing of the citations associated with the individual penalties within each of the assessments from which it seeks relief, it is impossible to know with certainty the particular penalties that were mistakenly paid, or the related citations. On remand, Aracoma must submit sufficient supporting materials (such as the proposed penalty assessments) to the judge, in order that he can ascertain those penalties (and the related citations) that are included in the penalty assessments from which Aracoma seeks relief.

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