FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW
SUITE 9500
WASHINGTON, DC 20001

September 27, 2007

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)	:	Docket Nos. WEVA 2007-663 WEVA 2007-664
v.	:	
SPARTAN MINING COMPANY	:	

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 August 15, 2007, the Commission received from Spartan Mining Company ("Spartan") a motion made by counsel 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).

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).

A. Docket No. WEVA 2007-663

On July 11, 2006, the Department of Labor's Mine Safety and Health Administration ("MSHA") issued proposed penalty assessment No. 000093307 to Spartan. Spartan submits that its safety director inadvertently paid proposed penalties for approximately 27 citations listed on that proposed penalty assessment which the operator intended to contest.[1] Spartan states that its

[1] Although Spartan states that 28 proposed penalties are the subject of its motion to reopen, Spartan only explicitly refers to 27. Mot. at 1, 2.

intent to contest the proposed penalties is evidenced by its actions in timely filing contests of the citations underlying those proposed penalties. It explains that "[i]t did not become apparent that the assessments had been paid until the Secretary filed the Motion to Dismiss." Mot. at 3. The operator further notes that its counsel entered into an informal agreement with MSHA stating in part that when a Massey Energy subsidiary inadvertently pays a penalty that it intended to contest, MSHA would not object to the operator's motion to reopen as long as the motion to reopen is filed within a reasonable time of the operator learning of its mistake or inadvertence. Attach. 5, at 1. It maintains that the instant matter is the type of circumstance identified in the agreement.

The Secretary opposes the operator's motion to reopen in Docket No. WEVA 2007-663 on the basis that the operator failed to file its motion to reopen within a "reasonable time" after it learned of its mistake or inadvertence as required by Fed. R. Civ. P. 60(b). She disagrees that the operator was unaware of the mistaken payment until her motion to dismiss was filed, which occurred on June 29, 2007. The Secretary explains that she filed a status report on December 28, 2006, explicitly stating that 21 of the 22 proposed penalties had been paid and that the twenty-second had been neither contested nor paid. S. Resp., Attach B. On March 30, 2007, the Secretary filed a second status report referring to the prior status report and explicitly stating that the twenty-second proposed assessment had not been paid and had been referred to the Department of the Treasury. *Id.*, Attach. C. The Secretary asserts that the operator filed its request to reopen more than seven months after it was informed that it had failed to contest the proposed penalties, and that it has failed to explain this delay in its request to reopen. *Id.* at 3.

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).

The status reports appear, from the limited information provided to us, to identify 21 of the 22 proposed penalties involved in Docket No. WEVA 2007-663 as paid, and the twenty-second as unpaid and uncontested and referred to the Department of Treasury. While the operator has failed to explain why it did not file its motion to reopen more promptly after receiving the status reports, we cannot determine from this record whether this constitutes "unreasonable" delay. However, we do conclude that Spartan must provide an explanation as to why reopening this matter is warranted in light of the status reports. Accordingly, in the interests of justice, we remand this matter to the Chief Administrative Law Judge for a determination of

whether good cause exists for Spartan's failure to timely contest the proposed penalty assessment 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.

B. Docket No. WEVA 2007-664

Spartan also requests the Commission to reopen another proposed assessment, No. 000113330, which was issued on March 13, 2007. As in the previous docket, Spartan asserts that its failure to timely contest the proposed assessment resulted from its safety director's mistaken payment of the proposed penalties relating to five citations. The Secretary does not oppose the request to reopen the penalty assessments in this docket.

In the interests of justice, we remand Docket No. WEVA 2007-664 to the Chief Administrative Law Judge for a determination of whether good cause exists for Spartan's failure to timely contest the penalty proposals 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.

Accordingly, we remand Docket Nos. WEVA 2007-663 and 2007-664 for further proceedings as appropriate.

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Michael F. Duffy, Chairman

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Mary Lu Jordan, Commissioner

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Michael G. Young, Commissioner

Distribution

Carol Ann Marunich, Esq.
Dinsmore & Shohl, LLP
215 Don Knotts Blvd., Suite 310
Morgantown, WV 26501

W. Christian Schumann, Esq.
Office of the Solicitor
U.S. Department of Labor
1100 Wilson Blvd., Room 2220
Arlington, VA 22209-2296

Chief Administrative Law Judge Robert J. Lesnick
Federal Mine Safety & Health Review Commission
601 New Jersey Avenue, N.W., Suite 9500
Washington, D.C. 20001-2021