

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

November 17, 2000

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
	:	
v.	:	Docket No. WEST 2000-632-M
	:	A.C. No. 10-01299-05529
IDAHO MINERALS	:	

BEFORE: Jordan, Chairman; Riley, Verheggen, and Beatty, Commissioners

ORDER

BY: Jordan, Chairman; Riley and Beatty, Commissioners

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994) (“Mine Act”). On September 20, 2000, the Commission received from Idaho Minerals a request 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). The Secretary of Labor does not oppose the motion for relief filed by Idaho Minerals.

Under section 105(a) of the Mine Act, an operator has 30 days following receipt of the Secretary of Labor’s proposed penalty assessment within which to notify the Secretary that it wishes to contest the proposed penalty. 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 its request, Idaho Minerals, which is represented by counsel, asserts that it never received a copy of the proposed penalty assessment. Mot. It explains that while it was in the process of selling its business and closing its operations,¹ it notified MSHA of its change of address. Idaho Minerals submits that the Department of Labor’s Mine Safety and Health Administration (“MSHA”) subsequently sent a second penalty assessment pertaining to a different violation to its former address. Although the second assessment was sent to Idaho

¹ Idaho Minerals states that it sold its assets, terminated its workers, settled its accounts, and shut down more than one year ago. Mot.

Minerals' old address, it somehow received the assessment, and then once again notified MSHA of its new address. *Id.* It notes that this second penalty assessment and the subject penalty assessment are consecutively numbered. *Id.* Idaho Minerals contends that during settlement of the second assessment, the Secretary's counsel and Idaho Minerals were unaware of the subject proposed assessment, and that it did not become aware of the assessment until it received a collection notice for the outstanding debt. *Id.* Idaho Minerals requests that the proceedings be "closed in a cost-efficient manner." *Id.*

We have held that, in appropriate circumstances and pursuant to Fed. R. Civ. P. 60(b), we possess jurisdiction to reopen uncontested assessments that have become final by operation of section 105(a). *See, eg., Kenamerican Resources, Inc.*, 20 FMSHRC 199, 201 (March 1998); *Jim Walter Resources, Inc.*, 15 FMSHRC 782, 786-89 (May 1993). We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of adequate or good cause for the failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Preparation Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995). In accordance with Rule 60(b)(1), we have previously afforded a party relief from a final order of the Commission on the basis of inadvertence or mistake. *See National Lime & Stone, Inc.*, 20 FMSHRC 923, 925 (Sept. 1998); *Peabody Coal Co.*, 19 FMSHRC 1613, 1614-15 (Oct. 1997); *Stillwater Mining Co.*, 19 FMSHRC 1021, 1022-23 (June 1997); *Kinross DeLamar Mining Co.*, 18 FMSHRC 1590, 1591-92 (Sept. 1996).

On the basis of the present record, we are unable to evaluate the merits of Idaho Minerals' position.² While Idaho Minerals claims that it did not receive the proposed penalty assessment, the reasons for, and circumstances surrounding that alleged non-receipt are not clear from the record. In the interest of justice, we remand the matter for assignment to a judge to determine whether Idaho Minerals has met the criteria for relief under Rule 60(b). *See, e.g., Bauman Landscape, Inc.*, 22 FMSHRC 289, 290 (Mar. 2000) (remanding where operator claimed it did not receive penalty assessment and that the return receipt was not signed by him); *Harvey Trucking*, 21 FMSHRC 567, 569 (June 1999) (remanding to judge where operator claimed it did not receive proposed assessment which was sent to operator's address twice but returned to MSHA undelivered); *Warrior Investment Co.*, 21 FMSHRC 971, 973 (Sept. 1999) (remanding to judge where operator claimed it did not receive proposed assessment and it was not clear from the record the reason why delivery was unsuccessful). If the judge determines 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.

Mary Lu Jordan, Chairman

James C. Riley, Commissioner

Robert H. Beatty, Jr., Commissioner

² In view of the fact that the Secretary does not oppose Idaho Minerals' motion to reopen this matter for a hearing on the merits, Commissioner Verheggen concludes that the motion should be granted.

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