

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

March 19, 2004

|                                   |   |                           |
|-----------------------------------|---|---------------------------|
| SECRETARY OF LABOR,               | : |                           |
| MINE SAFETY AND HEALTH            | : |                           |
| ADMINISTRATION (MSHA)             | : |                           |
|                                   | : | Docket No. YORK 2004-20-M |
| v.                                | : | A.C. No. 43-00396-10233   |
|                                   | : |                           |
| U.S. QUARRIED SLATE PRODUCTS INC. | : |                           |

BEFORE: Duffy, Chairman; Beatty, Jordan, Suboleski, 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. (1994) (“Mine Act”). On December 31, 2003, the Commission received from U.S. Quarried Slate Products Inc. (“U.S. Quarried”) 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).

We have held, however, 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).

In its motion, U.S. Quarried states that on August 18, 2003, MSHA conducted an inspection that resulted in the issuance of four citations, including Citation Nos. 6009085 and 6009086. Mot. at 2. It further states that while the Department of Labor's Mine Safety and Health Administration ("MSHA") proposed civil penalties relating to Citation Nos. 6009085 and 6009086, it conducted a special investigation regarding the remaining two citations and did not propose penalties as to those citations. *Id.* U.S. Quarried further states that, because the special investigation was ongoing, it did not realize that it was required to file a hearing request with respect to Citation Nos. 6009085 and 6009086 in order to preserve its rights to contest those citations. *Id.*; Attach A at 2. U.S. Quarried further submits that, due to inadvertent error in its office, the proposed assessment form was misplaced and not brought to the attention of its owner. *Id.* U.S. Quarried attached to its motion an affidavit of Drew Turner, the owner of U.S. Quarried, and copies of Citation Nos. 6009085 and 6009086. Attachs. A, B & C. The Secretary states that she does not oppose U.S. Quarried's request for relief.

Having reviewed U.S. Quarried's motion, in the interests of justice, we remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists for U.S. Quarried's failure to timely contest the penalty proposals and whether relief from the final orders 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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Robert H. Beatty, Jr., Commissioner

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Mary Lu Jordan, Commissioner

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Stanley C. Suboleski, Commissioner

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Michael G. Young, Commissioner

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