

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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July 13, 2006

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
 :
v. : Docket No. YORK 2006-63-M
 : A.C. No. 28-00546-80200 A
 :
JOSEPH HONACHI, :
employed by WHIBCO, INC. :

BEFORE: Duffy, Chairman; 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. (2000) (“Mine Act”). On June 26, 2006, the Commission received a motion made by counsel on behalf of Joseph Honachi, a former employee of Whibco Inc., to reopen a penalty assessment under section 110(c) of the Mine Act, 30 U.S.C. § 820(c), that had become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a). Counsel filed an amended motion on June 27, 2006.

Under the Commission’s Procedural Rules, an individual charged under section 110(c) has 30 days following receipt of the proposed penalty assessment within which to notify the Secretary of Labor that he or she wishes to contest the penalty. 29 C.F.R. § 2700.26. If the individual fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 29 C.F.R. § 2700.27.

In his motion to reopen, Honachi states that when he received the proposed penalty assessment from the Department of Labor’s Mine Safety and Health Administration (“MSHA”) in February 2006, he gave it to Whibco Inc. office staff “for processing.” Am. Mot. at 1-2. Honachi further states that, although he intended to contest the assessment, he failed to do so in a timely fashion “due to staff turnover” at Whibco Inc., and that the “uncontested forms were only discovered when [his] case was assigned to the undersigned counsel.” *Id.* at 2. The Secretary does not oppose Honachi’s request for relief.

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 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 Honachi’s motion, in the interests of justice, we remand this matter to the Chief Administrative Law Judge to determine whether good cause exists to reopen this proceeding. If it is determined that such relief is appropriate, this cases shall proceed pursuant to the Mine Act and the Commission’s Procedural Rules, 29 C.F.R. Part 2700.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

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