

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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May 18, 2007

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
	:	
v.	:	Docket No. YORK 2007-53-M
	:	A.C. No. 18-00404-108036
TRI-STATE STONE & BUILDING	:	
SUPPLY, INC.	:	

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 April 23, 2007, the Commission received from Tri-State Stone & Building Supply, Inc. (“Tri-State”) a motion from its counsel requesting 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).

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).

On March 23, 2006, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued Citation No. 6038707 to Tri-State. Tri-State timely filed a notice of contest of the citation pursuant to section 105(d) of the Mine Act, 30 U.S.C. § 815(d). On January 16, 2007, MSHA issued a proposed penalty assessment covering the citation. Tri-State did not contest the proposed assessment under section 105(a) and subsequently received a delinquency notice from MSHA. Tri-State asserts that, because the citation had already been contested, it failed to realize that the penalty contest form also had to be returned to MSHA. Tri-State requests that the Commission reopen the proceeding on the basis of inadvertence and mistake.

The Secretary states that she does not oppose Tri-State's request to reopen the penalty assessment proceeding.

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) 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.

Having reviewed Tri-State'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 Tri-State's failure to timely contest the penalty proposal 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.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

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