

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

August 3, 2001

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket Nos. YORK 2000-65-M
	:	YORK 2000-66-M
v.	:	
	:	
VERMONT UNFADING GREEN	:	
SLATE COMPANY, INC.	:	

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

ORDER

BY THE COMMISSION:

These civil penalty proceedings arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994) (“Mine Act”). On March 21, 2001, Administrative Law Judge T. Todd Hodgdon issued a decision vacating, modifying and affirming various citations alleging violations of mandatory safety standards issued to Vermont Unfading Green Slate Company, Inc. (“Vermont Slate”). 23 FMSHRC 310 (Mar. 2001) (ALJ). Vermont Slate subsequently filed with the Commission a petition for discretionary review, challenging the judge’s decision.

In a letter to the Commission dated July 16, 2001, Vermont Slate states that it filed its petition with the Commission via facsimile on April 20, 2001. Vermont Slate attached to its letter a facsimile history report, and a copy of its petition. The Commission has determined administratively that it received Vermont Slate’s petition on April 20.

The judge’s jurisdiction in this matter terminated when his decision was issued on March 21, 2001. 29 C.F.R. § 2700.69(b). Relief from a judge’s decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2); 29 C.F.R. § 2700.70(a). Due to clerical inadvertence, the Commission did not act on Vermont Slate’s petition within the statutory period for considering petitions for discretionary review. The

judge's decision became a final order of the Commission 40 days after its issuance. 30 U.S.C. § 823(d)(1).

The Commission has recognized that, in appropriate circumstances, it may grant various forms of relief from final Commission orders. *Guilmette Bros. Corp.*, 22 FMSHRC 803, 804 (July 2000). In reopening final orders, the Commission has found guidance in, and has applied "so far as practicable," Rule 60(b) of the Federal Rules of Civil Procedure. 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"); *Jim Walter Res., Inc.*, 15 FMSHRC 782, 787 (May 1993). In accordance with Rule 60(b)(1), we previously have afforded a party relief from a final order of the Commission on the basis of inadvertence or mistake. See *Gen. Chem. Corp.*, 18 FMSHRC 704, 705 (May 1996); *Kinross DeLamar Mining Co.*, 18 FMSHRC 1590, 1591-92 (Sept. 1996); *Stillwater Mining Co.*, 19 FMSHRC 1021, 1022-23 (June 1997).

In the interest of justice, we reopen these proceedings. See *Cedar Lake Sand & Gravel Co.*, 15 FMSHRC 2253, 2254 (Nov. 1993); *Remp Sand & Gravel*, 16 FMSHRC 501, 502 (Mar. 1994). We shall consider the merits of Vermont Slate's petition and rule on whether review should be directed by separate order.

Mary Lu Jordan, Chairman

James C. Riley, Commissioner

Theodore F. Verheggen, Commissioner

Robert H. Beatty, Jr., Commissioner

Distribution

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