

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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May 6, 2009

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. WEST 2009-200-M
	:	A.C. No. 26-00002-147595
v.	:	
	:	Docket No. WEST 2009-201-M
PREMIER CHEMICAL, LLC	:	A.C. No. 26-00002-150910

BEFORE: Duffy, Chairman; Jordan, Young, and Cohen, 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. (2006) (“Mine Act”).¹ On November 20, 2008, the Commission received from Premier Chemical, LLC (“Premier”) a request from the operator seeking to reopen two 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).

On April 17, 2008, and May 15, 2008, the Department of Labor’s Mine Safety and Health Administration issued proposed penalty assessments to Premier, proposing civil penalties for 59 citations. In its request, Premier states that it paid the assessments but would like to reopen them. Premier states that “much confusion was and is still surrounding the assessment process along with factual disagreement with the related citations.”

¹ Pursuant to Commission Procedural Rule 12, 29 C.F.R. § 2700.12, on our own motion, we hereby consolidate Docket Nos. WEST 2009-200-M and WEST 2009-201-M, as both dockets involve similar procedural issues and similar factual backgrounds.

The Secretary opposes Premier's request to reopen. She states that the assertion of the cause for Premier's failure to timely file – "confusion . . . surrounding the assessment process" – does not constitute a showing of the exceptional circumstances warranting reopening. She requests that the Commission deny the operator's request to reopen.

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) 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 mistake, inadvertence, or excusable neglect. *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 Premier's requests to reopen and the Secretary's response, we agree with the Secretary that Premier has failed to provide a sufficiently detailed explanation for its failure to timely contest the proposed penalty assessment. Premier's conclusory statement that its failure to timely file was due to confusion surrounding the assessment process does not provide the Commission with an adequate basis to justify reopening. Accordingly, we deny without prejudice Premier's request.² See, e.g., *Eastern Associated Coal, LLC*, 30 FMSHRC 392, 394 (May 2008); *James Hamilton Constr.*, 29 FMSHRC 569, 570 (July 2007).

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

² The words "without prejudice" mean that Premier may submit another request to reopen the case so that it can contest a penalty assessment. In the event that Premier chooses to refile its request to reopen, it should disclose with greater specificity the reasons for its failure to contest the proposed assessment in a timely manner.

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