

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW
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August 25, 2006

SECRETARY OF LABOR,	:	Docket No. CENT 2006-228-M
MINE SAFETY AND HEALTH	:	A.C. No. 14-01478-87955
ADMINISTRATION (MSHA)	:	
	:	Docket No. CENT 2006-229-M
v.	:	A.C. No. 14-01277-87965
	:	
NELSON QUARRIES, INC.	:	Docket No. CENT 2006-230-M
	:	A.C. No. 14-01597-90759

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”).¹ On August 7, 2006, the Commission received from Nelson Quarries, Inc. (“Nelson Quarries”) a letter requesting that the Commission reopen three 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).

In May and June 2006, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) sent to Nelson Quarries the proposed penalty assessments at issue. Nelson Quarries explains that it overlooked these dockets when submitting a previous request for

¹ Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers CENT 2006-228-M, CENT 2006-229-M, and CENT 2006-230-M, all captioned *Nelson Quarries, Inc.* and all involving similar procedural issues. 29 C.F.R. § 2700.12.

relief to the Commission on July 11, 2006, and it requests that these dockets be reopened along with the others. *See Nelson Quarries, Inc.*, 28 FMSHRC ____, Nos. CENT 2006-200-M through CENT 2006-209-M (Aug. 2, 2006) (order remanding dockets to judge). The Secretary responds that, due to the company's confusion over whether it should pay the proposed assessments at issue based upon information the company received from MSHA, she does not oppose Nelson Quarries'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 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).

Having reviewed Nelson Quarries'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 Nelson Quarries'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.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

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