

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW

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WASHINGTON, DC 20001

May 1, 2008

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. KENT 2008-470
ADMINISTRATION (MSHA)	:	A.C. No. 15-17216-131881
	:	
v.	:	Docket No. KENT 2008-471
	:	A.C. No. 15-17216-129480
WARRIOR COAL, LLC	:	

BEFORE: Duffy, Chairman; Jordan and Young, Commissioners<sup>1</sup>

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 January 31, 2008, the Commission received from Warrior Coal, LLC (“Warrior”) two letters seeking to reopen 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).<sup>2</sup>

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).

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<sup>1</sup> Commissioner Robert F. Cohen, Jr. assumed office after this case had been filed. A new Commissioner possesses legal authority to participate in pending cases, but such participation is discretionary. *Mid-Continent Res., Inc.*, 16 FMSHRC 1218 n.2 (June 1994). In the interest of efficient decision making, Commissioner Cohen has elected not to participate in this matter.

<sup>2</sup> Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers KENT 2008-470 and KENT 2008-471, both captioned *Warrior Coal, LLC*, and both involving similar procedural issues. 29 C.F.R. § 2700.12.

On October 18 and November 15, 2007, the Department of Labor's Mine Safety and Health Administration ("MSHA") issued Proposed Penalty Assessment Nos. 000129480 and 000131881, respectively, to Warrior for several citations. Warrior states that on November 16, 2007, it timely sent to MSHA its contest of the proposed penalties for 17 of the citations listed in Proposed Penalty Assessment No. 000129480. The operator explains that it failed to timely contest proposed penalties listed in Proposed Assessment No. 000131881 due to the "mine Holiday shutdown" and the employment of temporary clerical help during December 2007.

As to Proposed Penalty Assessment No. 000129480, the Secretary's response does not state whether the contest of the proposed penalties were received, but she does not oppose reopening the matter. The Secretary states that she does not oppose Warrior's request to reopen Proposed Penalty Assessment No. 000131881.

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 Warrior's requests, in the interests of justice, we remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists for granting relief from the final orders. 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.

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Michael F. Duffy, Chairman

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Mary Lu Jordan, Commissioner

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Michael G. Young, Commissioner

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