

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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June 2, 2006

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. LAKE 2006-101-M
	:	A.C. No. 47-03341-59208
v.	:	
	:	
R.G. HUSTON COMPANY, INC.	:	

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”). On April 27, 2006, the Commission received a letter from the safety director of R.G. Huston Company, Inc. (“R.G. Huston”) requesting that the Commission reopen a penalty assessment that became 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 February 18, 2004, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued two citations to R.G. Huston. The company asserts that when it subsequently received proposed penalties for the citations on June 17, 2005, it indicated on the penalty assessment form that it wished to contest the proposed penalties and sent this to MSHA. R.G. Huston further states that on April 6, 2006, it received a collection notice for the proposed penalties. When the company contacted MSHA, it was told that the agency did not have a copy of the company’s contest. The Secretary of Labor states that she does not oppose R.G. Huston’s request for relief, and states further that “MSHA has no record of receiving the [company’s contest], but does not question that it was sent as indicated.”

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 R.G. Huston’s request for relief, in the interests of justice, we remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists for R.G. Huston’s apparent 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

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

Distribution

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