

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).

In his motion, Ross states that the subject proposed penalty assessment (No. 36-00970-11102 A) was issued to him on October 15, 2003. Mot. at 1. Ross further submits that on October 31, 2003, he served a copy of a Notice of Contest challenging the proposed penalty assessment to the Commission, a regional Office of the Solicitor with the Department of Labor, and to the Department of Labor’s Mine Safety and Health Administration’s Civil Penalty Compliance Office (“Compliance Office”). *Id.*; Ex. 1, at 3. Attached to the Notice of Contest was a copy of his request for hearing (“green card”) and a copy of the subject citation. Ross states that he received from the Commission’s Docket Office a copy of the Notice of Contest, which was stamped with the date of November 3, 2003. Ross explains that when his counsel contacted the Commission’s Docket Office to inquire of the status of the case, his counsel was informed that the case had not been assigned to a judge because the Compliance Office had not processed the Notice of Contest. Mot. at 1-2. Ross states that he was subsequently informed by the Compliance Office that it had no record of the Notice of Contest. *Id.* at 2. The Secretary states that she does not oppose Ross’ request for relief.

Having reviewed Ross' motion, in the interests of justice, we remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists for Ross' 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 2700.¹

Michael F. Duffy, Chairman

Robert H. Beatty, Jr., Commissioner

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

¹ On this same date, we are separately issuing an order relating to Ross' request for relief from a final order in Docket No. PENN 2004-17 (A.C. No. 36-00970-04180 A). If the judge grants relief in the subject proceeding and Docket No. PENN 2004-17, he shall take such action, if any, to consolidate the proceedings as he deems appropriate.

Distribution

Marco M. Rajkovich, Jr., Esq.
LeToi D. Mayo, Esq.
Wyatt, Tarrant & Combs, LLP
250 West Main Street, Suite 1600
Lexington, KY 40507

W. Christian Schumann, Esq.
Office of the Solicitor
U.S. Department of Labor
1100 Wilson Blvd., 22nd Floor West
Arlington, VA 22209-2247

Chief Administrative Law Judge Robert J. Lesnick
Federal Mine Safety & Health Review Commission
601 New Jersey Avenue, N.W., Suite 9500
Washington, D.C. 20001-2021