

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

April 5, 2007

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
	:	
v.	:	Docket No. PENN 2007-164
	:	A.C. No. 36-08637-100333
FKZ COAL INC.	:	

BEFORE: Duffy, Chairman; Jordan 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 March 13, 2007, the Commission received from FKZ Coal Inc. (“FKZ Coal”) a letter seeking to reopen a penalty assessment that had become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a). The Secretary of Labor filed a response to FKZ Coal’s letter on March 14, 2007.

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 October 11, 2006, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued a proposed penalty assessment, A.C. No. 000100333, to FKZ Coal for six citations or orders. In its letter, FKZ Coal states that it is unable to pay the assessments. The company offers no explanation, however, for its failure to timely contest the proposed assessment. In her response, the Secretary states that FKZ Coal “identifies no legally cognizable grounds for requesting reopening” because the company’s “stated reason of not having the money to pay does not meet any of the legal requirements of Rule 60(b)” of the Federal Rules of Civil Procedure. S. Resp. at 2.

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) 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.

Because FKZ Coal’s request for relief does not explain the company’s failure to contest the proposed assessment, and is not based on any of the grounds for relief set forth in Rule 60(b), we hereby deny the request for relief without prejudice. *See Marsh Coal Co.*, 28 FMSHRC 473, 475 (July 2006); *Eastern Assoc. Coal, LLC*, 28 FMSHRC 999, 1000 (Dec. 2006).

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

Distribution

Robert Derck, Foreman
F. K. Z. Coal Inc.
P.O. Box 62
Locust Gap, PA 17840

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

Myra James, Chief
Office of Civil Penalty, MSHA
U.S. Department of Labor
1100 Wilson Blvd., 25th Floor
Arlington, VA 22209