

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

February 23, 2006

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. WEST 2006-100-M
ADMINISTRATION (MSHA)	:	A.C. No. 26-02478-68079
	:	
v.	:	Docket No. WEST 2006-104-M
	:	A.C. No. 26-02000-67992
SOUTHERN NEVADA PAVING	:	

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 January 25, 2006, the Commission received from the Secretary of Labor a motion to reopen two consolidated penalty cases which had been dismissed by Administrative Law Judge Jacqueline Bulluck in an order dated December 23, 2005. Judge Bulluck dismissed the cases, Docket Numbers WEST 2006-100-M and WEST 2006-104-M, upon a motion made by the Secretary, filed in the form of a letter dated December 6, 2005. In this motion to dismiss, the Secretary stated that “the underlying citations have been vacated.”

In her motion to reopen, the Secretary states that in the caption to her December 6, 2005, motion to dismiss, the wrong docket numbers were used, namely, the dockets that she now seeks to reopen. Mot. at 3. The record reflects that, in a letter dated January 13, 2006, counsel for the Secretary attempted to advise Judge Bulluck of this error.¹ By then, however, the judge had issued the order of dismissal.

The judge’s jurisdiction in the instant penalty cases (WEST 2006-100-M and WEST 2006-104-M) terminated when her order was issued on December 23, 2005. 29 C.F.R.

¹ Southern Nevada Paving filed a response to the Secretary’s January 13 letter in which the company opposed the Secretary’s request that the judge, in effect, withdraw her order of dismissal. The company did not file a response to the Secretary’s motion to reopen.

§ 2700.69(b). Under the Mine Act and the Commission’s procedural rules, relief from a judge’s decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2); 29 C.F.R. § 2700.70(a). If the Commission does not direct review within 40 days of a decision’s issuance, it becomes a final decision of the Commission. 30 U.S.C. § 823(d)(1). The Commission has not directed review of the judge’s order, which became a final order of the Commission on February 1, 2006.

In evaluating requests to reopen final 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”); *Jim Walter Resources, Inc.*, 15 FMSHRC 782, 787 (May 1993).

Having reviewed the Secretary’s motion, in the interests of justice, we hereby remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists to excuse the Secretary’s error that led to the dismissal of the two instant cases, and for further proceedings as appropriate.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

Distribution

Jan Coplick, Esq.
Office of the Solicitor
U.S. Department of Labor
71 Stevenson St., Suite 1110
San Francisco, CA 94105

James J. Gonzales, Esq.
Holland & Hart, LLP
555 17th Street, Suite 3200
Denver, CO 80202

John D. Pereza
Conference & Litigation Representative
U.S. Department of Labor, MSHA
2060 Peabody Road, Suite 610
Vacaville, CA 95687

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