

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW

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WASHINGTON, DC 20001

July 7, 2006

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. WEST 2006-387-M
	:	A.C. No. 05-04483-32619 H783
v.	:	
	:	
CRALL & BOWES, 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 May 8, 2006, the Commission received a letter from the president of Crall & Bowes, Inc. (“Crall & Bowes”) requesting that the Commission 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 filed a response to Crall & Bowes’s letter on May 12, 2006.

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 July 21, 2004, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) sent a proposed penalty assessment to Crall & Bowes, a copy of which is attached to the company’s letter and is captioned as case No. 05-04483-32619 H783. The proposed assessment became a final Commission order on September 4, 2004. Crall & Bowes states in its letter that it believed the case had been resolved in proceedings before the Commission in Docket No. WEST 2004-360-M. Crall & Bowes attached to its letter a copy of an order approving the penalty in and dismissing Docket No. WEST 2004-360-M. However, the proposed penalty

assessment Crall & Bowes now seeks to reopen, No. 05-04483-32619 H783, was not in Docket No. WEST 2004-360-M, which instead concerned another proposed assessment with a similar case number, 05-04483-27382 H783.

The Secretary states in her response that she opposes the Commission granting Crall & Bowes's request for relief under Rule 60(b)(1) of the Federal Rules of Civil Procedure on the grounds that it was not filed within one year after the proposed penalty assessment at issue became a final Commission order. *See J S Sand & Gravel, Inc.*, 26 FMSHRC 795, 796 (Oct. 2004) (denying several requests to reopen filed more than one year after the penalty proposals at issue had become final orders, noting that under Rule 60(b) of the Federal Rules of Civil Procedure, any motion for relief must be made within a reasonable time, and in the case of mistake, inadvertence, or excusable neglect not more than one year after the order was entered).

Crall & Bowes failed to timely contest the proposed assessment before us. Therefore, it became a final Commission order 30 days after the company received it.

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. 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).

However, under Rule 60(b) any motion for relief must be made within a reasonable time, and in the case of mistake, inadvertence, or excusable neglect not more than one year after the order was entered. Fed. R. Civ. P. 60(b). Here, Crall & Bowes has requested reopening of the proposed assessment more than one year after it became a final Commission order. Because Crall & Bowes waited well over a year to request relief, its request is untimely. *J S Sand & Gravel*, 26 FMSHRC at 796. Accordingly, Crall & Bowes's motion is denied and this proceeding is dismissed.

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Michael F. Duffy, Chairman

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Mary Lu Jordan, Commissioner

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Stanley C. Suboleski, Commissioner

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Michael G. Young, Commissioner

Distribution

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