

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW
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December 21, 2006

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEST 2007-99-M
v.	:	A.C. No. 02-01138-81209 FF6
	:	
PARSONS STEEL ERECTORS, 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 November 22, 2006, the Commission received from Parsons Steel Erectors, Inc. (“Parsons”) 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).

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 23, 2006, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued a proposed penalty assessment, A.C. No. 000081209, to Parsons proposing penalties in the sum of \$184.00 for Citation Nos. 6311286 and 6311287, and requesting the payment of an unrelated outstanding balance. Parsons states that, on approximately March 8, 2006, it sent payment for the outstanding balance and returned the form to MSHA, contesting the proposed penalties for Citation Nos. 6311286 and 6311287. The operator later received a letter from MSHA dated June 5, 2006, requesting payment in the amount of \$184.40 for the two citations. On approximately June 20, 2006, Parsons paid MSHA the amount of \$184.40. On approximately September 25, 2006, Parsons received from MSHA a refund in the amount of

\$184.40. Parsons requests that the Commission reopen the proposed penalty assessment. The Secretary responds that she does not oppose Parsons' request to reopen the penalty assessment.

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 Parsons' request, in the interests of justice, we remand this matter to the Chief Administrative Law Judge for a determination of whether Parsons failed to timely contest the penalty proposal and, if so, 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

Michael G. Young, Commissioner

Distribution

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