

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

June 18, 2008

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

v.

MASS TRANSPORT INC.

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Docket No. WEVA 2008-425  
A.C. No. 46-05649-118643 C479

BEFORE: Duffy, Chairman; Jordan, Young, and Cohen, 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 18, 2008, the Commission received from “Delbarton Preparation Plant, Mass Transport Inc.” a motion from counsel requesting 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 May 23, 2007, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued Proposed Assessment No. 000118643 to Mass Transport Inc. for various violations that allegedly occurred at the Delbarton Preparation Plant. The motion states that Proposed Assessment No. 000118643 was not timely contested because MSHA mailed the proposed penalty assessment to the wrong address. Although the Secretary does not oppose the request to reopen, she notes that the proposed penalty assessment and the delinquency notice were mailed to the address of record at the time of assessment. The Secretary states that Mass Transport Inc. should check the mailing address it provided to MSHA to be sure that it is up-to-date.

The motion filed by counsel sets forth conflicting and confused information identifying the movant in the motion to reopen and the facts of this case. In the caption of the motion, counsel identify the respondent as “Delbarton Preparation Plant,” and identify the mine as “Mass Transport Inc.”<sup>1</sup> (The caption is wrong in both respects.) In the motion itself, counsel state that the motion is brought by “Delbarton Preparation Plant, Mass Transport Inc. (‘Delbarton’),” and note that “Mass Transport Inc. is owned and operated by Logan County Mine Services, Inc., but is a contractor for Delbarton Preparation Plant and was doing work for Delbarton at the time the citation was issued.” Counsel state that the proposed penalty assessment was issued to “Delbarton” on about May 23, 2007, and that the Proposed Assessment “was mailed to Mass Transport Inc.” at an address “which is not, and has never been, either the mailing address or physical address of either Delbarton or Mass Transport.”

According to its terms, the proposed penalty assessment was issued only to Mass Transport Inc. Thus, the request to reopen should have been filed solely by Mass Transport Inc. We deny the motion to reopen because counsels’ motion is unacceptably confused and erroneous in several respects and does not even make clear what entity is actually filing the motion. In particular, counsel have not established that the movant, as identified in the motion to reopen, has standing to make this request.

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Michael F. Duffy, Chairman

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Mary Lu Jordan, Commissioner

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Michael G. Young, Commissioner

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Robert F. Cohen, Jr., Commissioner

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<sup>1</sup> Although the caption of the motion to reopen identifies the respondent as “Delbarton Preparation Plant,” the Commission’s Docket Office issued a docketing notice that correctly lists Mass Transport Inc. as the respondent.

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