

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

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WASHINGTON, DC 20001

November 14, 2008

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. SE 2008-843-M
	:	A.C. No. 22-00585-1145711
KRYSTAL GRAVEL	:	
	:	

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 July 7, 2008, the Commission received from Krystal Gravel (“Krystal”) a letter seeking to reopen an assessment that may have 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 April 3, 2008, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued to Krystal a proposed assessment as a result of 18 citations that were issued in February 2008. On April 22, Krystal mailed a letter to MSHA’s Civil Penalty Compliance Office in which Krystal stated that it did not contest the violations but that it needed “help on the assessment amounts” and that penalties were “calculated wrong and are too high.”¹ In response,

¹ MSHA’s proposed assessment form instructs an operator “to either pay the penalty, or notify MSHA that you wish to contest the proposed assessment.” Later in the form, MSHA states, “If you wish to contest and have a formal hearing on just *some* of the violations listed in the Proposed Assessment, check the specific violation numbers in the first column and mail a

the Secretary states that she does not oppose reopening the proposed assessment but that Krystal's letter was not adequate to contest a proposed assessment.

Having reviewed Krystal's request and the Secretary's response, we conclude that the proposed assessment at issue has not become a final order of the Commission because Krystal effectively timely contested it. We deny Krystal's motion as moot and remand this matter to the Chief Administrative Law Judge for further proceedings as appropriate, pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.² *See Lehigh Cement Co.*, 28 FMSHRC 440, 441 (July 2006).

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

copy[.]” (Emphasis added). Because Krystal wished to contest *all* the citations listed on the proposed assessment, its letter to MSHA should have been sufficient notification in light of MSHA's instructions.

² Under Commission Procedural Rule 28(a), 29 C.F.R. § 2700.28(a), the Secretary has 45 days following the contest of a proposed penalty assessment to file a petition of assessment with the Commission. Given our disposition in this proceeding, we deem that the time period for filing a petition of assessment should run from the date of issuance of this order.

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