

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

OCT 19 2016

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), :
v. : Docket No. PENN 2015-101
CUMBERLAND COAL RESOURCES, LP : A.C. No. 36-05018-358678

BEFORE: Jordan, Chairman; Young, Cohen, and Althen, Commissioners

ORDER

BY THE COMMISSION:

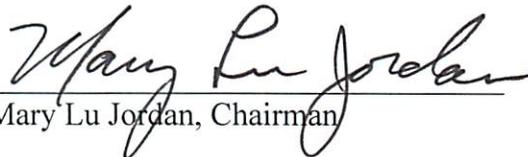
This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”). On January 8, 2015, the Commission received from Cumberland Coal Resources, LP (“Cumberland”) a motion seeking to reopen a penalty assessment that had appeared to become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

MSHA records indicate that the proposed assessment was mailed via United States Postal Service (“USPS”) to the operator on August 13, 2014 to the operator’s address of record on the legal ID report. Cumberland claims it never received a proposed penalty assessment from the Secretary. USPS did not record a date of delivery but the Secretary estimated that the proposed assessment was delivered on August 16, 2014. On September 15, 2014, the proposed assessment was deemed a final order of the Commission, when it appeared that the operator had not filed a Notice of Contest within 30 days.

The Secretary does not oppose the request to reopen and admits that it has no record confirming delivery of the proposed assessment. In this regard, the USPS online delivery report does not contain either a successful or non-successful delivery notation and the Secretary does not have any record of the proposed assessment being returned undelivered.

Having reviewed Cumberland's request and the Secretary's response, we conclude that the proposed penalty assessment did not become a final order of the Commission because the operator never had an opportunity to timely contest the proposed assessment. Section 105(a) states that if an operator "fails to notify the Secretary that he intends to contest the . . . proposed assessment of penalty . . . the citation and the proposed assessment of penalty shall be deemed a final order of the Commission." 30 U.S.C. § 815(a). Here, there is no evidence that the operator ever received the proposed assessment at issue. This obviates any need to invoke Rule 60(b). Accordingly, the operator's motion to reopen is moot.

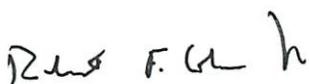
We deem the operator's motion a contest of Citation Nos. 7028183, 7023620, 7023621, 7023622, 7027832, 7030058 and 7030059. Accordingly, consistent with Rule 28, the Secretary shall file a petition for assessment of penalty within 45 days of the date of this order. See 29 C.F.R. § 2700.28.



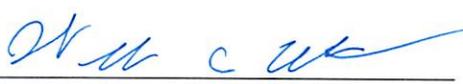
Mary Lu Jordan, Chairman



Michael G. Young, Commissioner



Robert F. Cohen Jr., Commissioner



William I. Althen, Commissioner

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