

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

MAR 06 2017

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

v.

CARTER ROAG COAL COMPANY

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: Docket No. WEVA 2016-86
: A.C. No. 46-08194-391101
:
:

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

ORDER

BY THE COMMISSION:

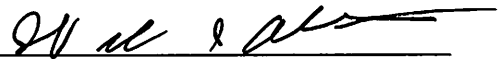
This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”). On November 2, 2015, the Commission received from Carter Roag Coal Company (“Carter Roag”) a motion seeking to reopen a penalty assessment that had appeared to become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a). In response to this motion, the Secretary of Labor requests that the motion to reopen be denied as moot.

In his response, the Secretary states that the penalty assessment that Carter Roag seeks to reopen is already the subject of an active contest case, Docket No. WEVA 2016-107.¹ The Secretary maintains that he received a timely contest of this assessment, and has since filed a penalty petition with the Commission and assigned the case to an attorney.

Having reviewed Carter Roag’s motion and the Secretary’s response, we conclude that the proposed penalty assessment did not become a final order of the Commission because the operator timely contested 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, Carter Roag notified the Secretary of the contest. This obviates any need to reopen the penalty assessment.

¹ Commission records confirm that Docket No. WEVA 2016-107 deals with the penalty assessment at issue.

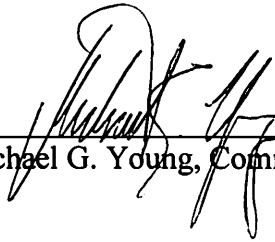
Accordingly, the operator's motion to reopen is moot, and this case is remanded to the Chief Administrative Law Judge for dismissal pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.



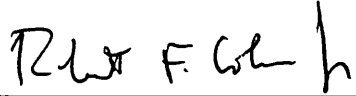
William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

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