

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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MAR 31 2017

SECRETARY OF LABOR,	:	Docket No. CENT 2016-232-M
MINE SAFETY AND HEALTH	:	A.C. No. 41-03760-399975
ADMINISTRATION (MSHA)	:	
	:	Docket No. CENT 2016-231-M
v.	:	A.C. No. 41-03760-397835
	:	
THE QUIKRETE COMPANIES	:	

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 March 3, 2016, the Commission received from The Quikrete Companies (“Quikrete”) a motion seeking to reopen two penalty assessments that had become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).¹

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).

We have held, however, 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 orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure, under which the Commission may relieve a party from a final order of the Commission on the basis of mistake, inadvertence, excusable neglect, or other reason justifying relief. *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

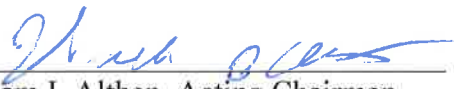
¹ For the limited purpose of addressing these motions to reopen, we hereby consolidate docket numbers CENT 2016-232-M and CENT 2016-231-M involving similar procedural issues. 29 C.F.R. § 2700.12.

proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Records of the Department of Labor's Mine Safety and Health Administration ("MSHA") indicate that the proposed assessment involved in Docket No. CENT 2016-231-M, A.C. No. 41-03760-397835, was delivered on December 8, 2015 and became a final order of the Commission on January 7, 2016. A delinquency notice for this assessment was mailed on February 22, 2016. MSHA's records further reflect that the proposed assessment involved in Docket No. CENT 2016-232-M, A.C. No. 41-03760-399975, was delivered on January 4, 2016, and became a final order of the Commission on February 3, 2016. MSHA received a partial payment for these assessments on February 2, 2016.

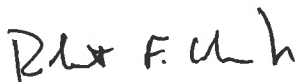
Quikrete asserts that it mailed the contest documents, but addressed them to MSHA's collection office in St. Louis, Missouri, instead of MSHA's Arlington office. The Secretary does not oppose the request to reopen, but urges the operator to take steps to ensure that future penalty contests are timely filed.

Having reviewed Quikrete's request and the Secretary's response, we find that the failure to file the contests at the proper MSHA office was an inadvertent mistake. In the interest of justice, we hereby reopen these matters and remand them to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700. Accordingly, consistent with Rule 28, the Secretary shall file petitions for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.


William I. Althen, Acting Chairman


Mary Lu Jordan, Commissioner


Michael G. Young, Commissioner


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