

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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**APR 12 2017**

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA),	:	Docket No. WEST 2016-591-M A.C. No. 04-04119-386633
v.	:	Docket No. WEST 2016-592-M A.C. No. 04-04119-389032
WM. J. CLARK TRUCKING SERVICE INC.	:	Docket No. WEST 2015-839-M A.C. No. 04-04119-386633
	:	Docket No. WEST 2015-840-M A.C. No. 04-04119-386633
	:	Docket No. WEST 2015-893-M A.C. No. 04-04119-389032

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 July 18, 2016, the Commission received from Wm. J. Clark Trucking Service Inc. (“Clark”) a motion seeking to reopen a penalty assessment that the operator believed had become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).<sup>1</sup> Yet, in its letter requesting reopening, Clark references two proposed penalty assessments. Accordingly, the Commission’s Docket Office assigned Clark’s request two docket numbers—WEST 2016-591-M (A.C. No. 000386633) and WEST 2016-592-M (A.C. No. 000389032)—to consider each assessment separately.

The Secretary opposes Clark’s request, explaining that the assessments in question were properly contested and had already been docketed prior to Clark’s filing of the motion to reopen. The Secretary states that Assessment No. 000386633 was split between Docket Nos. WEST

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<sup>1</sup> For the limited purpose of addressing these motions to reopen, we hereby consolidate docket numbers WEST 2016-591-M, WEST 2016-592-M, WEST 2015-840-M, WEST 2015-893-M, and WEST 2015-839-M involving similar procedural issues. 29 C.F.R. § 2700.12.


2015-839-M and WEST 2015-840-M, while Assessment No. 000389032 was docketed as Docket No. WEST 2015-893-M. WEST 2015-840-M and WEST 2015-893-M were assigned to a Commission Administrative Law Judge and, according to Commission records, have since been settled and disposed. Accordingly, the Secretary asserts that the operator's motion regarding these assessments is moot.

In WEST 2015-839-M, however, the operator failed to file an Answer, so Chief Administrative Law Judge Robert J. Lesnick issued an "Order to Show Cause" and an "Order of Default" on December 4, 2015. The Secretary asserts that the Chief Judge's order became a final order on January 3, 2016, because Clark failed to respond.

According to Commission records, the operator filed two separate letters with the Commission. The first letter, dated October 30, 2015, served as the operator's Answers for WEST 2015-840-M and WEST 2015-893-M. The second letter, dated December 21, 2015, also lists WEST 2015-893-M in its subject line. Accordingly, the Commission's docket office filed the December 21 letter in that file. Upon closer review, however, we note that the operator in his December 21 letter refers to Assessment No. 000386633, which was docketed in part as WEST 2015-839-M. Furthermore, the operator also notes in that letter that it received a filing on December 4, 2015, the date of the Order to Show Cause in WEST 2015-839-M.

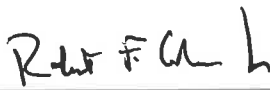
Given this evidence, we understand that the operator intended his December 21 letter to serve as a response to the Order to Show Cause for WEST 2015-839-M, but mistakenly transposed the last two digits of the docket number. The Commission received Clark's letter on December 21, 2015, prior to the January 3, 2016 deadline for responding to the Order to Show Cause. Therefore, we conclude that the operator was not in default under the terms of the Order to Show Cause because it timely complied with the Order. *See Vulcan Constr. Materials*, 33 FMSHRC 2164 (Sept. 2011). This renders the Default Order a nullity. Accordingly, WEST 2015-839 is remanded 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.

Docket Nos. WEST 2015-840-M and WEST 2015-893-M were assigned to a Commission Judge and settled in two separate orders on January 5, 2017. We therefore agree with the Secretary's contention that the request to reopen these dockets is moot.<sup>2</sup>

  
William I. Althen, Acting Chairman

  
Mary Lu Jordan, Commissioner

  
Michael G. Young, Commissioner

  
Robert F. Cohen, Jr., Commissioner

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<sup>2</sup> Docket No. WEST 2016-591-M is duplicative of WEST 2015-839-M and WEST 2015-840-M, while Docket No. WEST 2016-592-M is duplicative of WEST 2015-893-M. Because they are duplicative, Docket Nos. WEST 2016-591-M and WEST 2016-592-M are hereby dismissed.

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