

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

JUL 10 2017

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

v.

COUCH AGGREGATES LLC

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: Docket No. SE 2015-112-M
: A.C. No. 01-03130-368269
:
:

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 September 22, 2015, the Commission received from Couch Aggregates LLC (“Couch”) a motion seeking to reopen a penalty assessment proceeding and seeking relief from the Default Order entered against it.

The Mine Safety and Health Administration (“MSHA”) sent the proposed penalty assessment at issue to Couch in December 2014. Couch properly contested the assessment, listed the contesting official as its counsel, Jonathan Holloway, and provided his personal address for any correspondences. On January 16, 2015, MSHA mailed a Petition for Assessment of Civil Penalty to Couch’s Alabama address, rather than Holloway’s address. Respondent did not file an answer to the Petition.

On July 10, 2015, the Chief Administrative Law Judge issued an Order to Show Cause in response to the operator’s failure to answer the Secretary of Labor’s penalty petition. By its terms, the Order to Show Cause was deemed a Default Order on August 10, 2015, because the operator failed to file an answer within 30 days. Like the proposed assessment and the penalty petition, the Order to Show Cause was sent to the operator’s Alabama address of record.


Holloway avers that he did not receive a copy of the Order to Show Cause until September 22, 2015, when counsel for the Secretary forwarded him a copy of the order via e-mail.

The Secretary opposes the request to reopen, noting that the petition was correctly mailed to the operator’s address of record and received on January 19, 2015. In addition, the Secretary asserts that counsel subsequently emailed a copy of the penalty petition to Holloway on June 19, 2015, and reminded the operator’s attorney that it still needed to file an answer in the matter.

Under the Mine Act and the Commission’s procedural rules, the Chief Administrative Law Judge’s Order of Default became a final order of the Commission 40 days after the default occurred. *See* 30 U.S.C. § 823(d); 29 C.F.R. § 2700.70(a). In evaluating requests to reopen final orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure and has granted relief on the basis of mistake, inadvertence, excusable neglect, or another 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”); *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993). 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 proceedings on the merits will be permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Commission Procedural Rule 66 requires that an order to show cause be issued to a party before an entry of default against that party. 29 C.F.R. § 2700.66(a). Commission Procedural Rule 7 requires that “[w]henever a party is represented by an attorney or other authorized representative who has entered an appearance on behalf of such party . . . , service thereafter shall be made upon the attorney or other authorized representative.” 29 C.F.R. § 2700.7. Although Holloway was listed as counsel for Couch, Commission records indicate that the July 10 Show Cause Order in this matter was delivered to Couch’s office, rather than to Holloway. Accordingly, a default order should not have been entered against the operator. Holloway received a copy of the show cause order from the Secretary’s counsel on September 22, 2015, and promptly filed a request that the case be reopened that same day.

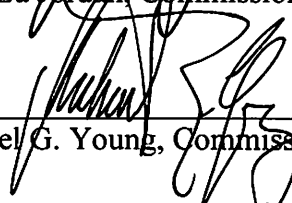
Given Holloway’s prompt filing of the motion to reopen after receiving the Order to Show Cause, we find that the operator acted in good faith and filed its motion to reopen within a reasonable time upon learning of the default. In the interest of justice, we therefore reopen the proceeding, vacate the Default Order, and remand this matter 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.




William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

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