

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)	:	
	:	Docket No. SE 2016-32
v.	:	A.C. No. 01-01401-387866 A
	:	
STEVE INGRAM, employed by JIM	:	
WALTER RESOURCES, INC.	:	

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 a motion from Steve Ingram (“Ingram”) seeking to reopen a penalty assessment under section 110(c) of the Mine Act, 30 U.S.C. § 820(c), that had become a final order of the Commission.

Under the Commission’s Procedural Rules, an individual charged under section 110(c) has 30 days following receipt of the proposed penalty assessment within which to notify the Secretary of Labor that he or she wishes to contest the penalty. 29 C.F.R. § 2700.26. If the individual fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 29 C.F.R. § 2700.27.

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 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”); *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

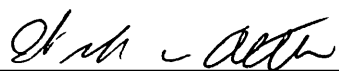
proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessment for the alleged 110(c) violation was delivered on August 3, 2015, and became a final order of the Commission on September 2, 2015. A delinquency notification was mailed to the individual on October 19, 2015.

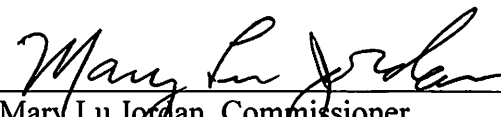
Ingram asserts that Order No. 8524966, a 104(d)(1) order, was the basis for Ingram’s alleged violation under section 110(c), 30 U.S.C. § 820(c). However, as part of a settlement between the Secretary and Ingram’s employer, this order was modified to a 104(a) citation. Ingram contends that by operation of law, a modification of a section 104(d) order to a section 104(a) citation precludes individual liability under section 110(c). Therefore, Ingram argues that this matter must be reopened so that the 110(c) proceeding can be dismissed.

The Secretary does not oppose the request to reopen, does not dispute Ingram’s contentions, and requests that the Commission reopen this 110(c) proceeding. After the Commission reopens this proceeding, the Secretary suggests that MSHA will move to dismiss it.

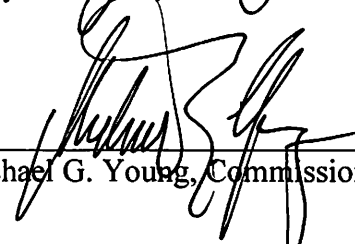
Having reviewed Ingram’s request and the Secretary’s response, given that both parties agree that this matter should be reopened and then dismissed, we hereby reopen this matter and remand it to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission’s Procedural Rules, 29 C.F.R. Part 2700. Accordingly, consistent with Rule 28, the Secretary shall either dismiss this matter or file a petition for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.



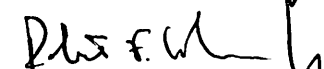
William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

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