

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710

AUG 03 2017

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

v.

BLACK RIVER COAL, LLC

:
:
:
: Docket No. VA 2016-59
: A.C. No. 44-06859-389543
:
:

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 December 14, 2015, the Commission received from Black River Coal, LLC (“Black River”) a motion seeking to reopen a penalty assessment that had become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

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 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 was delivered on August 17, 2015, and became a final order of the Commission on September 16, 2015. Black River asserts that the Notice of Contest in this matter was mailed to the correct address but was never received by the Secretary of Labor. A certified mail receipt shows that Black River mailed the contest to the correct address, but failed to include the suite number. USPS tracking records show that the contest was mailed on August 29, 2015 and reached the Merrifield, Virginia post office on September 1, 2015. No further delivery is shown. Black River was mailed a delinquency notice on November 2, 2015.¹ The Secretary does not oppose the request to reopen.

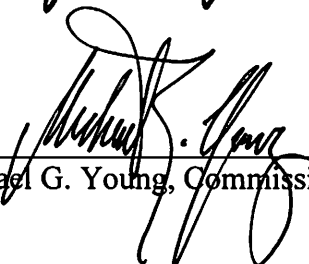
Having reviewed Black River’s request and the Secretary’s response, we determine that the operator mistakenly failed to include the suite number in an otherwise correct mailing address for the Secretary of Labor. The initial mailing was timely and the operator rapidly corrected the filing upon learning of its mistake. Therefore, in the interest of justice, 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 file a petition for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.



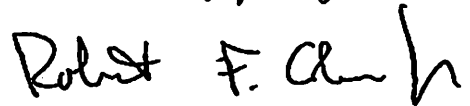
William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

¹ The Secretary submitted a letter stating that the delinquency notice was mailed on November 2, 2015. However, he did not provide any mailing records to substantiate that claim.

Distribution:

James F. Bowman
P.O. Box 99
Midway, WV 25878

W. Christian Schumann, Esq.
Office of the Solicitor
U.S. Department of Labor
201 12th St. South, Suite 500
Arlington, VA 22202-5450

Chief Administrative Law Judge Robert J. Lesnick
Federal Mine Safety & Health Review Commission
1331 Pennsylvania Ave. N.W., Suite 520N
Washington, DC 20004-1710

Melanie Garris
Office of Civil Penalty Compliance
Mine Safety and Health Administration
U.S. Department of Labor
201 12th St. South, Suite 500
Arlington, VA 22202-5450