

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N

WASHINGTON, DC 20004-1710

October 2, 2020

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. KENT 2018-0276
	:	A.C. No. 15-15215-462060
v.	:	
	:	Docket No. KENT 2018-0327
BEE B&B, LLC	:	A.C. No. 15-15215-466282
	:	
and	:	
	:	Docket No. KENT 2018-0334
RELIANT CONTRACTING, LLC	:	A.C. No. 15-16855-583
	:	
and	:	
	:	Docket No. VA 2018-0142
PASCO SERVICES, LLC	:	A.C. No. 44-03088-467377

BEFORE: Rajkovich, Chairman; Althen and Traynor, Commissioners

ORDER

BY THE COMMISSION:

A representative of Blackjewel, LLC (“Blackjewel”) has filed motions to reopen four penalty assessment proceedings and to relieve the operators in those proceedings from Default Orders issued to Bee B&B, LLC (“Bee B&B”) (KENT 2018-0276 and 2018-0327), Reliant Contracting, LLC (“Reliant”)(KENT 2018-0334), and Pasco Services, LLC (“Pasco”)(VA 2018-0142)¹ in the above-captioned case.

¹ The four motions addressed in this order were filed by the same operator and rely upon the same rationale and common facts as a basis for re-opening. For the limited purpose of addressing these motions to reopen, we hereby consolidate these four dockets, which involve similar procedural issues. 29 C.F.R. §2700.12.

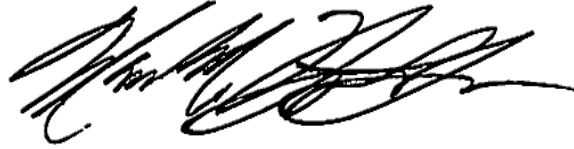
Between September 18 and October 16, 2018, the Chief Administrative Law Judge issued Orders to Show Cause in response the operators' perceived failure to answer the Secretary of Labor's Petitions for Assessment of Civil Penalty in these four dockets. By their terms, the Orders to Show Cause were deemed Default Orders between October 19 and December 4, 2018, when it appeared that the operators had not filed answers within 15 days.

As a threshold matter, the motions do not make clear the relationship between Blackjewel, its representative, Mr. Jacobs, and the three operators whose motions are addressed in this order. If Mr. Jacobs is an owner, partner, officer, or employee of the operators, he is permitted to represent them pursuant to Commission Procedural Rule 3(b)(3). If not, he may be permitted to represent the operators with the permission of the Commission, pursuant to Commission Procedural Rule 3(b)(4).

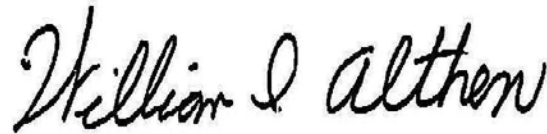
The Secretary has not opposed reopening, and the context suggests there may be an ongoing relationship among these parties, Mr. Jacobs, and Blackjewel. But we were given no facts supporting that relationship when the motions were filed. We therefore grant the motions to reopen conditionally, and we direct either Mr. Jacobs or the parties themselves to file a motion explaining the relationship between Mr. Jacobs and the operators named in this order and seeking permission to have Mr. Jacobs represent the operators in reopening the motions.²

² If Mr. Jacobs is an owner, officer, partner, or employee of any or all of the operators, a simple explanation of that relationship will be sufficient, without a motion for permission to represent any operators he would be permitted to represent under Commission Procedural Rule 3.

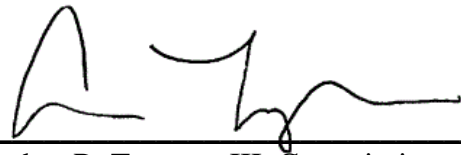
Permission shall be granted retroactively to the dates the original motions were filed, unless the Secretary objects and he demonstrates that permitting said representation would be improper.³ If the motion directed by this order is not filed within 30 days, our conditional grant will lapse and these motions to reopen will be deemed denied with prejudice.⁴



Marco M. Rajkovich, Jr., Chairman



William I. Althen, Commissioner



Arthur R. Traynor, III, Commissioner

³ There is an additional problem in KENT 2018-0276. Bee B&B paid the penalty in that docket in full on the same day the motion to reopen it was filed. Any motion made in response to this order must thus explain why this motion is not moot.

⁴ Because more than one year has elapsed since the orders in these matters became final, a new or amended motion that does not address the representation issue will be denied as timely. *See* Fed. R. Civ. P. 60(c)(1).

Distribution (by e-mail):

Joseph G. Jacobs
Representative
Blackjewel, L.L.C.
joe.jacobs@blackjewel.us

Emily Toler Scott, Esq.
Office of the Solicitor
Scott.Emily.T@dol.gov

Chief Administrative Law Judge Glenn Voisin
Federal Mine Safety & Health Review Commission
GVoisin@fmshrc.gov

Melanie Garris
Office of Civil Penalty Compliance
Mine Safety and Health Administration
Garris.Melanie@DOL.GOV