

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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October 2, 2020

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. KENT 2018-0316
v.	:	A.C. No. 000475063
	:	
BLACKJEWEL, LLC	:	

BEFORE: Rajkovich, Chairman; Althen and Traynor, Commissioners

**ORDER**

BY THE COMMISSION:

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”).<sup>1</sup> On January 16, 2019, the Commission received from Blackjewel, LLC (“Blackjewel”) a “request to reopen” a penalty assessment proceeding and relieve it from the Default Order entered against it. Similar motions were filed in the other 13 dockets subject to this order.

Default was entered against the operator in each of these dockets after the Chief Administrative Law Judge issued an Order to Show Cause in response to Blackjewel’s perceived failure to answer the Secretary of Labor’s Petition for Assessment of Civil Penalty. By their terms, each of the Orders to Show Cause was deemed a Default Order when it appeared that the operator had not filed an answer within 15 days.<sup>2</sup>

Blackjewel’s motions assert that it had failed to answer the Secretary’s petitions or to timely respond to the Show Cause Orders because an employee abruptly left the company. The operator’s representative states that he was working on a global settlement agreement of many other matters with representatives of the Secretary on March 28 and 29, 2019, when the

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<sup>1</sup> This operator filed a similar motion, relying upon the same reason as a basis for re-opening and stating other common facts, in nine other dockets. For the limited purpose of addressing these motions to reopen, we hereby consolidate docket numbers KENT 2018-0316 and VA 2018-0109, -0130, -0150, -0147, -0151,-0153,-0154,-0155, and -0162, involving similar procedural issues. 29 C.F.R. §2700.12.

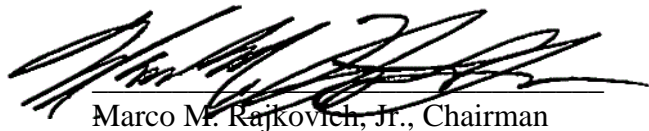
<sup>2</sup> The operator did file an untimely answer to the penalty petition in the lead, captioned case on November 23, 2018, after the effective date of default imposed by the Chief ALJ’s Show Cause Order.

Secretary's personnel informed him that several of the company's dockets were in default.<sup>3</sup> The representative promptly filed separate motions to reopen each of the cases between April 4 and 8, 2019.

The Secretary has filed with the Commission a response to each of the operator's motions and does not oppose the operator's motion to reopen any of the cases addressed by this order.

The Judge's jurisdiction in these matters terminated when the defaults occurred. 29 C.F.R. § 2700.69(b). Under the Mine Act and the Commission's procedural rules, relief from a judge's decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2)(A)(i); 29 C.F.R. § 2700.70(a). If the Commission does not direct review within 40 days of a decision's issuance, it becomes a final decision of the Commission. 30 U.S.C. § 823(d)(1). Consequently, the Judge's order in each of these cases has become a final decision of the Commission.

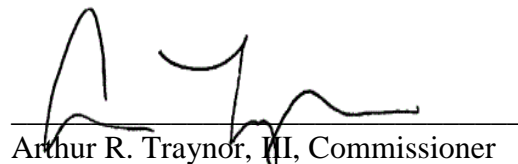
The operator filed promptly after the operator became aware of the defaults. The operator asserts a single, common excuse for all of these defaults.<sup>4</sup> Having considered the operator's motion and the Secretary's response not opposing reopening, we find the general excuse sufficient to establish excusable neglect. In the interest of justice, we therefore reopen these 13 dockets and remand them to the Chief Administrative Law Judge for assignment. However, the operator should be aware that failure to attend to its responsibilities under the Act or to explain them more thoroughly in the future may result in denial of subsequent motions.



Marco M. Rajkovich, Jr., Chairman



William I. Althen, Commissioner



Arthur R. Traynor, III, Commissioner

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<sup>3</sup> Each motion to reopen a docket subject to this order recites the same general factual circumstances.

<sup>4</sup>The operator has two additional pending defaults, KENT 2018-0354 and VA 2018-0019, that vary factually and procedurally from the issues in this case, and are therefore being addressed in separate Commission orders. The operator's representative also filed four motions on behalf of three other operators, each reciting the same basis for re-opening. Those are also being addressed in separate orders.

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