

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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October 19, 2020

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. LAKE 2019-0256
v.	:	A.C. No. 11-00098-482588
	:	
MID-ILLINOIS QUARRY, LLC	:	

BEFORE: Rajkovich, Chairman; Althen and Traynor, 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 May 21, 2019, the Commission received from Mid-Illinois Quarry (“Mid-Illinois”) 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).

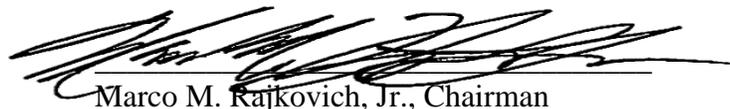
Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of 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 February 8, 2019, and became a final order of the Commission on March 11, 2019. Mid-Illinois asserts that the notice of contest was timely sent on March 3, 2019. (Although the operator has not provided proof of mailing, records show that MSHA processed payment for the uncontested citations in the same assessment a few days later on March 8, 2019.) However, the operator received a delinquency notification on May 14, 2019, indicating that MSHA had not received the notice of contest. After contacting the phone number provided on the delinquency letter, Mid-Illinois filed a motion to reopen on May 21, 2019. Mid-Illinois posits that MSHA did not receive the initial notice of contest due to postal service delays, noting that the delinquency letter (dated April 25) had taken over two weeks to arrive. The Secretary does not oppose the request to reopen, but urges the operator to take steps to ensure that future penalty contests are timely filed.

Having reviewed Mid-Illinois’ motion and the Secretary’s response, we find that the operator has sufficiently explained its failure to timely contest the citations at issue as the result of inadvertence, mistake, and excusable neglect. Mid-Illinois apparently attempted to timely file the notice of contest, and filed a motion to reopen within a week of learning that the notice of contest had not been received. We note that this is a pro se operator with no history of defaults or motions to reopen in the past 24 months, and that the Secretary does not oppose reopening or dispute the explanation offered by the operator.

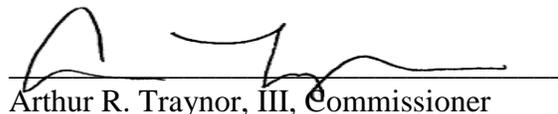
In the interest of justice, we hereby reopen this matter and remand it to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission’s Procedural Rules, 29 C.F.R. Part 2700. Accordingly, consistent with Rule 28, the Secretary shall file a petition for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.



Marco M. Rajkovich, Jr., Chairman



William I. Althen, Commissioner



Arthur R. Traynor, III, Commissioner

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