

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

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

October 20, 2020

v.

WARRIOR MET COAL MINING, LLC

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:
: Docket No. SE 2020-0143
: A.C. No. 01-01247-503726
:
: Docket No. SE 2020-0144
: A.C. No. 01-01401-503727

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”). On February 28, 2020, the Commission received from Warrior Met Coal Mining, LLC (“WMCM”) two motions seeking to reopen penalty assessments that had become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).¹

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

¹ The two motions addressed in this order 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 dockets, which involve similar procedural issues. 29 C.F.R. §2700.12.

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 in SE 2020-0144 was delivered on November 16, 2019, and became a final order of the Commission on December 18, 2019. MSHA's records show that the proposed assessment in SE 2020-0143 was delivered on November 18, 2019, and became a final order on December 18, 2019.

The operator's motions state that it mistakenly mailed the notices of contest in both cases to MSHA's St. Louis office, along with its payment of uncontested penalties, instead of to the Civil Penalty Compliance Office.

MSHA sent the operator delinquency notices for both assessments on January 31, 2020. The operator filed its motions to reopen on February 28. The Secretary does not oppose the requests to reopen, but urges the operator to take steps to ensure that future penalty contests are timely filed with the proper office.

Having reviewed WMCM's requests and the Secretary's responses, we find that the operator has explained its failure to timely contest the citations at issue as the result of inadvertence, mistake, and excusable neglect. The motions were filed promptly after MSHA notified the operator of its delinquencies. However, we agree with the Secretary that the operator should show greater care in filing contests to citations and orders. In addition to the two motions addressed in this order, the operator has filed seven other motions to reopen final orders in the past 24 months. The Secretary suggests that he may oppose future motions. Likewise, the Commission may deny future motions seeking extraordinary relief from motions that have become final.

In the interest of justice, we hereby reopen these matters and remand them 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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