

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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October 23, 2020

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEST 2019-0516
v.	:	A.C. No. 02-01049-000490002
	:	
PINTO VALLEY MINING CORP.	:	Docket No. WEST 2019-0535
	:	A.C. No. 02-01049-000491992

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 September 9 and September 13, 2019, the Commission received from Pinto Valley Mining Corp. (“Pinto Valley”) 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

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.

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 in WEST 2019-0516 was delivered on May 13, 2019, and became a final order of the Commission on June 13, 2019. MSHA’s records show that the proposed assessment in WEST 2019-0535 was delivered on June 4, 2019, and became a final order on July 5, 2019. In both motions to reopen, Pinto Valley says that it followed a reliable procedure to contest citations and orders by certified mail, return receipt requested.

Affidavits by the mine’s interim safety superintendent state that the notices of contest were timely filed in both cases. In WEST 2019-0516, the affidavit states that the operator made a partial payment of \$328, which it sent with the notice of contest on May 14. The affidavit submitted in WEST 2019-0535 states that the completed notice of contest was mailed on June 4. The affidavit in this case also states that a partial payment was made, of \$9219.² Both motions include copies of the proposed assessments and completed contest forms. They do not include copies of the certified mail receipts, but the affidavits claim that it is common not to receive these forms for MSHA filings.

MSHA sent the operator delinquency notices, on August 19 for WEST 2019-0535, and on August 26 for WEST 2019-0516. The operator filed its motions to reopen on September 9 and September 16. 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.

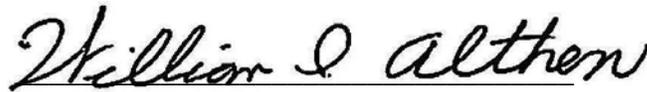
Having reviewed Pinto Valley’s requests and the Secretary’s responses, we find that the operator has sufficiently explained its failure to timely contest the citations at issue as the result of inadvertence, mistake, and excusable neglect. The motions were filed promptly after MSHA notified the operator of its delinquencies, and in both cases the operator states that it timely mailed the notices of contest, but did not receive a receipt for delivery. The agency received partial payment for both dockets. Both motions are well-supported by affidavits and documentation.

² MSHA’s response to each motion acknowledges receipt of the payments submitted by the operator on July 25, 2019. The assessments in both cases had become final by that date.

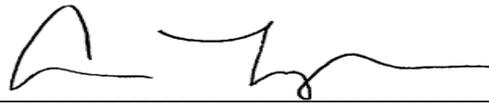
In the interest of justice, we hereby reopen these matters and remand them to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700. Accordingly, consistent with Rule 28, the Secretary shall file a petition for assessment 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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