

**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. WEVA 2020-0150
v.	:	A.C. No. 46-09152-000500943
	:	
ROCKWELL MINING, LLC	:	Docket No. WEVA 2020-0151
	:	A.C. No. 46-09427-000500948

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 December 9, 2019, the Commission received from Rockwell Mining, LLC, (“Rockwell”) 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).<sup>1</sup>

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

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<sup>1</sup> 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 was delivered on October 7, 2019, and became a final order of the Commission on November 7, 2019. Rockwell’s motions say that the proposed assessments in this matter were delivered while its safety manager – the person responsible for processing assessments for action by the corporate safety director – was on vacation. On his return, the safety manager was “overwhelmed” and had difficulty catching up. He marked the citations that he believed should be contested and forwarded the contest forms to the safety director during the first week in November.

While the safety director sent the forms to MSHA on November 7, MSHA did not receive them until November 13, six days after the proposed assessments had become final decisions of the Commission. 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 Rockwell’s requests and the Secretary’s responses, we find that the operator has moved promptly for relief and has sufficiently explained its failure to timely contest the citations at issue as the result of excusable neglect. However, we do note that these are the third and fourth motions to reopen filed by the operator in the past 24 months.<sup>2</sup> The operator should heed the Secretary’s admonition and take seriously its responsibilities under the Act and should be aware that future motions relying on a similar excuse may be denied.

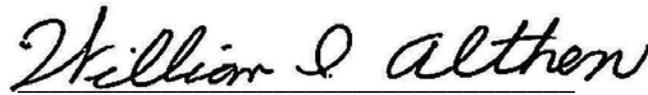
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<sup>2</sup> The operator has another motion to reopen pending before the Commission, but it relies on different facts and a different rationale for reopening.

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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