

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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January 12, 2021

SECRETARY OF LABOR, :  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA) :  
 :  
v. : Docket No. CENT 2020-0155-M  
 : A.C. No. 39-00022-508281  
 :  
GCC DACOTAH, INC. : Docket No. CENT 2020-0156-M  
 : A.C. No. 39-00022-509671  
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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 May 28, 2020, the Commission received from GCC Dacotah, Inc., (“GCC Dacotah”) 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

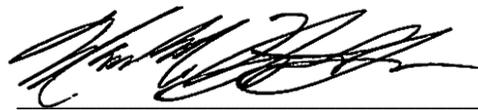
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<sup>1</sup> The two motions addressed in this order rely upon the same rationale and common facts as a basis for re-opening. For the limited purpose of addressing these motions to reopen, we hereby consolidate these dockets, which involve similar procedural issues. 29 C.F.R. §2700.12.

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 assessments were delivered on February 3 and March 9 and became final orders of the Commission on March 5 and April 9, respectively. GCC Dacotah’s motion says that the proposed assessments in these matters were not timely contested due to an improper understanding and implementation of an internal procedure. GCC Dacotah’s motion notes that it paid the uncontested penalties for the assessments before the contest date. 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 GCC Dacotah’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. 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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