

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710

January 19, 2021

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEVA 2019-0622
	:	A.C. No. 46-09357-481953
	:	
v.	:	
	:	Docket No. WEVA 2019-0623
	:	A.C. No. 46-01368-491694
	:	
KC TRANSPORT, INC.	:	

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 August 5, 2019, the Commission received from KC Transport, Inc. (“KC”) two motions seeking to reopen two 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


¹ For the limited purpose of addressing these motions to reopen, we hereby consolidate docket numbers WEVA 2019-0622 and WEVA 2019-0623 involving similar issues. 29 C.F.R. § 2700.12.

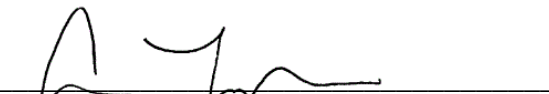
Commission on the basis of mistake, inadvertence, excusable neglect, or other reason justifying relief. *See* 29 C.F.R. § 2700.1(b) (“the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure”); *JWR*, 15 FMSHRC at 787. We have also observed that default 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 for WEVA 2019-0622 was delivered on January 29, 2019, and became a final order of the Commission on February 28, 2019. MSHA records also indicate that the proposed assessment for WEVA 2019-0623 was delivered on May 28, 2019, and became a final order of the Commission on June 27, 2019. The operator asserts that on July 11, 2019, the operator learned from counsel that both proposed assessments were delinquent. KC asserts that the administrative assistant working at the mine had thought she had sent the proposed assessments to their counsel, when in fact, she did not. The operator explains how it has since improved its processing and handling of proposed assessments to make sure this does not happen again. 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 KC’s request and the Secretary’s response, we find that the operator acted with excusable neglect and has taken steps to improve its internal processing systems. 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.


Matco M. Rajkovich, Jr., Chairman


William I. Althen, Commissioner


Arthur R. Traynor, III, Commissioner

Distribution (e-mail):

James P. McHugh, Esq.,
Hardy Pence, PLLC,
10 Hale Street, 4th Floor
PO Box 2548
Charleston, WV 25329-2548
jmchugh@hardypence.com

John M. McCracken, Esq.
Office of the Solicitor
Division of Mine Safety and Health
U.S. Department of Labor
201 12th Street South, Suite 401
Arlington, VA 22202-5452
McCracken.John.M@dol.gov

April Nelson, Esq.
Office of the Solicitor
U.S. Department of Labor
201 12th Street South, Suite 401
Arlington, VA 22202-5452
Nelson.April@dol.gov

Chief Administrative Law Judge Glynn Voisin
Federal Mine Safety & Health Review Commission
1331 Pennsylvania Avenue, NW, Suite 520N
Washington, DC 20004-1710
GVoisin@fmshrc.gov

Melanie Garris
Office of Civil Penalty Compliance
Mine Safety and Health Administration
201 12th Street South, Suite 401
Arlington, VA 22202
Garris.Melanie@DOL.GOV