

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N

WASHINGTON, DC 20004-1710

December 11, 2020

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. LAKE 2020-0083
v.	:	A.C. No. 12-00028-506029A
	:	
WILLIAM TACKITT	:	

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 February 10, 2020, the Commission received from William Tackitt a motion seeking to reopen a penalty assessment that had become a final order 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 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).

¹ Mr. Tackitt was cited individually pursuant to section 110(c) of the Act, which provides that individuals cited under it are subject to the same penalties under section 110(a) as persons cited under section 105(a). The time limit for contesting penalties under section 105(a) thus also applies to those cited under section 110(c). *See* 30 U.S.C. §§815(a); 820(a) and (c).

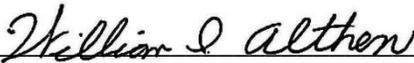
Records of the Department of Labor's Mine Safety and Health Administration ("MSHA") indicate that the proposed assessment in this docket was delivered to the operator on December 23, 2020, and became a final order of the Commission on January 23, 2020. In his motion to reopen, Mr. Tackitt, through counsel, says that the mine which employed him followed a reliable procedure to contest citations and orders from MSHA.

An affidavit by the mine's safety manager states that the notice of contest was not timely filed because the proposed assessment was delivered while the mine was closed, from December 20, 2019, to January 6, 2020. Further, the affidavit says the operator was confused because it had never received an assessment under Section 110(c) before, and had already contested the underlying assessments proposed against the mine. The motion to reopen was filed promptly upon discovery of the failure to contest. 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.

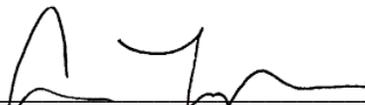
Having reviewed Mr. Tackitt's request and the Secretary's response, we find that the motion sufficiently explains the failure to timely contest the assessment here as the result of inadvertence, mistake, and excusable neglect. In the interest of justice, we hereby reopen this matter and remand it to 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.



Marco M. Rajkovich, Jr., Chairman



William I. Althen, Commissioner



Arthur R. Traynor, III, Commissioner

Distribution (by e-mail):

Donna Vetrano Pryor, Esq.
Attorney for William Tackitt
Husch Blackwell, L.L.P.
donna.pryor@huschblackwell.com

Archith Ramkumar
Appellate Counsel
U.S. Department of Labor
Office of the Solicitor
Ramkumar.Archith@dol.gov

Chief Administrative Law Judge Glenn Voisin
Federal Mine Safety & Health Review Commission
GVoisin@fmshrc.gov

Melanie Garris
Office of Civil Penalty Compliance
Mine Safety and Health Administration
Garris.Melanie@DOL.GOV