

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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December 11, 2020

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
 : Docket No. SE 2019-0094
v. : A.C. No. 01-00851
 :
OAK GROVE RESOURCES, LLC :

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 March 11, 2019, the Commission received from Oak Grove Resources, LLC (“Oak Grove Resources”) a motion seeking to reopen an order that had become final 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 an order issued under the Act 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 within 30 days of receipt of the notification of the order, it is deemed a final order of the Commission. 30 U.S.C. § 815(a).

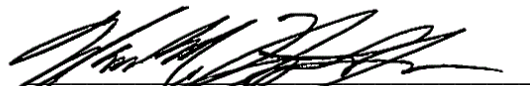
We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“*JWR*”). In evaluating requests to reopen final orders, the Commission 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

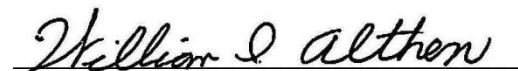
¹ The order was a non-assessable order issued under Section 104(b) of the Mine Act, 30 U.S.C. § 814(b) .

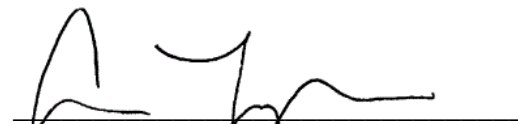
proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the Section 104(b) order was issued on October 30, 2019, and became a final order of the Commission on November 30, 2019. Oak Grove Resources’ motion says that it had conferenced the order, and had told the inspector at the time the order was issued that it intended to conference it. The operator states that it tried to get a response from MSHA about the result of the conference, and believed that it would not need to contest the order until after the conference process was complete. On February 20, 2020, MSHA told the operator that the order was being upheld. Oak Grove Resources contacted counsel, who filed the motion to reopen. The Secretary does not oppose the request to reopen.

Having reviewed Oak Grove Resources’ request and the Secretary’s response, we find that the operator has sufficiently explained its failure to timely contest the citations at issue as the result of mistake, inadvertence, 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. 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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