

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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**March 1, 2023**

SECRETARY OF LABOR, :  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA) :  
 : Docket No. WEST 2020-0254  
v. : A.C. No. 04-04783-511041  
 :  
GLOBAL PUMICE, LLC :

BEFORE: Jordan, Chair; Althen, Rajkovich, and Baker, 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. (2018) (“Mine Act”). On March 31, 2021, the Commission received from Global Pumice, LLC a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On November 23, 2020, the Chief Administrative Law Judge issued an Order to Show Cause in response to Global Pumice’s perceived failure to answer the Secretary of Labor’s May 18, 2020, Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on December 24, 2020, when it appeared that the operator had not filed an answer within 30 days.

Global Pumice asserts that the answer to the Petition for Assessment of Civil Penalty was mailed to the Mine Safety and Health Administration (“MSHA”) rather than the Commission, in the mistaken belief that it would be forwarded to the appropriate office. The operator further states that the Order to Show Cause was never received, because it was mailed to the incorrect address. The operator became aware of the default upon receiving a delinquency notification on March 23, 2020, and filed the motion to reopen shortly thereafter. The Secretary does not oppose the request to reopen but reminds Global Pumice to ensure that future contests are timely filed in accordance with MSHA’s regulations and the Commission’s procedural rules.

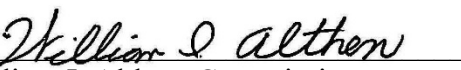
The Judge’s jurisdiction in this matter terminated when the default occurred. 29 C.F.R. § 2700.69(b). Under the Mine Act and the Commission’s procedural rules, relief from a judge’s decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2)(A)(i); 29 C.F.R. § 2700.70(a). If the Commission does not

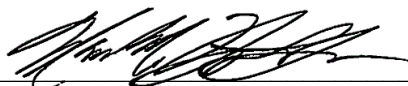
direct review within 40 days of a decision's issuance, it becomes a final decision of the Commission. 30 U.S.C. § 823(d)(1). Consequently, the Judge's order here has become a final decision of the Commission.

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"); *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993). 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 will be permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Having reviewed Global Pumice's request and the Secretary's response, we find that the operator's failure to properly file a response was the result of mistake. In the interest of justice, we hereby reopen the proceeding and vacate the Default Order. Accordingly, this case is remanded 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.

  
Mary Lu Jordan, Chair

  
William I. Althen, Commissioner

  
Marco M. Rajkovich, Jr., Commissioner

  
Timothy J. Baker, Commissioner

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