

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

MAR 14 2018

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),

v.

ALVIN J. COLEMAN & SONS, INC.

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Docket No. YORK 2016-142-M
A.C. No. 27-00050-416819

BEFORE: Althen, Acting Chairman; Jordan, Young, and Cohen, Commissioners

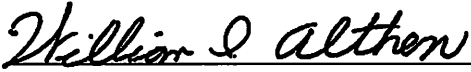
ORDER

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 September 20, 2016, the Commission received from Alvin J. Coleman & Sons, Inc. (“Coleman”) a motion seeking to reopen a penalty assessment that had appeared to become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessment was delivered on August 24, 2016, and would have become a final order of the Commission on September 23, 2016. On September 20, 2016, before the date on which the order would become final, the operator filed a request to reopen. In that request, the operator stated that it initially contested the citation and intended to contest the assessment but the office had mistakenly paid the assessed penalty. The Secretary does not oppose the request to reopen.


Having reviewed conclude request and the Secretary's response, we conclude that the proposed penalty assessment did not become a final order of the Commission because the operator timely contested the proposed assessment. Section 105(a) states that if an operator "fails to notify the Secretary that he intends to contest the . . . proposed assessment of penalty . . . the citation and the proposed assessment of penalty shall be deemed a final order of the Commission." 30 U.S.C. § 815(a). Here, Coleman notified the Secretary of the contest. This obviates any need to invoke Rule 60(b). Accordingly, the operator's motion to reopen is moot, and 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.



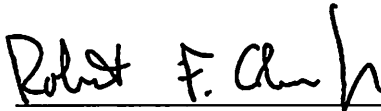
William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

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