

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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April 19, 2022

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEST 2018-0449
v.	:	A.C. No. 45-03710-465836
	:	
LROCK INDUSTRIES	:	

BEFORE: Traynor, Chair; Althen and Rajkovich, 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 4, 2019, the Commission received from LRock Industries (“LRock”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On November 9, 2018, the Chief Administrative Law Judge issued an Order to Show Cause in response to LRock’s perceived failure to answer the Secretary of Labor’s July 30, 2018 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on November 26, 2018, when it appeared that the operator had not filed an answer within 15 days.

LRock asserts that the citations at issue, despite being “written one minute apart” from each other, were divided into two docket numbers without the operator’s knowledge. As a result, according to the operator, it only properly answered the penalty petition for the first docket number without answering the petition for the second docket number. The operator asserts that its main office that receives the mail may have failed to notify him about it. According to the operator’s plant manager, the main office is located one hour from the mine site, and the plant manager rarely visits the main office because he is at the mine each day. The Secretary does not oppose the request to reopen but notes that all proposed penalty petitions filed by the Secretary clearly instruct the operator to file an answer within 30 days of the date on the petition. He urges the operator to timely file an answer to all penalty petitions and to take Show Cause Orders from the Administrative Law Judge seriously.

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 LRock's request and the Secretary's response, we find that the operator acted with excusable neglect due to its apparent confusion regarding the process and its lack of knowledge about the case being divided into two separate dockets. *See, e.g., Lehigh SW Cement Co.*, 39 FMSHRC 482 (Mar. 2017) (reopening a case where operator had overlooked the fact that the proposed assessment had been split into several dockets, which had caused the operator to fail to file a timely answer). 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.


Arthur R. Traynor, III, Chair


William I. Althen, Commissioner


Marco M. Rajkovich, Jr., Commissioner

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