

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

WASHINGTON, DC 20004-1710

MAY 04 2018

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

v.

CASTILLO READY MIX, INC.

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Docket No. CENT 2018-27-M
A.C. No. 29-02237-444887

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 October 31, 2017, the Commission received from Castillo Ready Mix, Inc. (“Castillo”) 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).

On August 3, 2017, the Secretary issued a proposed penalty assessment to Castillo. Castillo asserts that the operator always intended to contest Citation No. 9355405 but that the person tasked with handling the paperwork was ill at the time of the citation and subsequently passed away.¹ The operator believed that the paperwork had been misplaced and had not been timely contested. However, documents submitted by the Secretary show that the assessment in this matter was listed as delivered by the U.S. Postal service on October 17, 2017, and also listed as “unclaimed.” Further, MSHA’s records indicate that a contest for the assessment of Citation No. 9355405 was mailed on October 27, 2017 and received by MSHA on October 31, 2017. That penalty contest was docketed as CENT 2018-30-M


Having reviewed Castillo’s 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

¹ The operator filed medical reports, a birth certificate, and other private documents with its request to reopen to substantiate this claim. The Commission has placed copies of these personal records under seal. We ask that the Secretary destroy any copies of those records that he received from the Castillo.

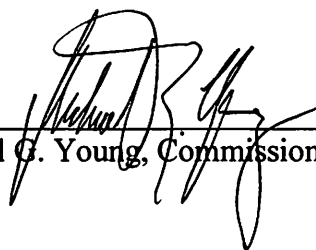
Commission.” 30 U.S.C. § 815(a). Here, Castillo notified the Secretary of the contest. This obviates any need to invoke Rule 60(b). Because Castillo timely contested the proposed penalty and the Secretary filed the necessary civil proceeding before the Commission, the operator’s motion to reopen is moot. 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.



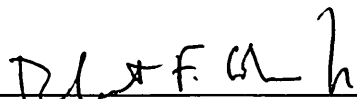
William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

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