

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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May 22, 2019

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
 : Docket No. WEST 2018-452-M
v. : A.C. No. 04-05857-458100
 :
UPLAND ROCK, INC. :

BEFORE: Rajkovich, Chairman; Jordan, Young, 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 June 22, 2018, the Commission received from Upland Rock, Inc. (“Upland”) a motion seeking to reopen a penalty assessment that had become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty 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, the proposed penalty assessment 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 proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

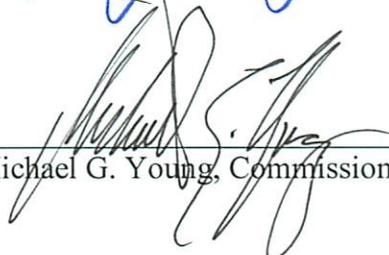
Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessment was delivered on February 5, 2018, and became a final order of the Commission on March 7, 2018.

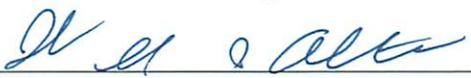
Upland asserts that its failure to timely contest the Proposed Penalty Assessment was the result of an employee’s mistake. Upon receipt of the Proposed Penalty Assessment, an Upland employee stored the document in his personal binder without notifying any other Upland personnel. After receiving a delinquency notice from MSHA dated May 18, 2018, the employee realized his mistake and came forward with the Proposed Penalty Assessment. Upland did not state when it received this delinquency notice. However, Upland filed its Motion to Reopen with the Commission on June 18, 2018, which could not have been more than 30 days from its receipt of the delinquency notice. The Secretary does not oppose the request to reopen, but urges the operator to take steps to ensure that future penalty contests are timely filed.

Having reviewed Upland’s request and the Secretary’s response, we find that the operator’s failure to timely contest the assessment was the result of an Upland employee’s mistake. 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


Mary Lu Jordan, Commissioner


Michael G. Young, Commissioner


William I. Althen, Commissioner


Arthur R. Traynor, III, Commissioner

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