

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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August 3, 2021

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. PENN 2021-0036
	:	A.C. No. 36-07230-527799
v.	:	
	:	Docket No. PENN 2021-0037
CONSOL PENNSYLVANIA COAL	:	A.C. No. 36-07416-527800
COMPANY, LLC	:	
	:	Docket No. PENN 2021-0038
	:	A.C. No. 36-10045-527805

BEFORE: Traynor, Chair; Althen and Rajkovich, Commissioners

ORDER

BY THE COMMISSION:

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”). On March 1, 2021, the Commission received from Consol Pennsylvania Coal Company, LLC (“Consol”) three motions seeking to reopen penalty assessments that had become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).¹

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).

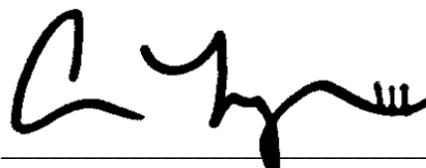
We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“*JWR*”). In evaluating requests to reopen final orders, the Commission 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

¹ For the limited purpose of addressing these motions to reopen, we hereby consolidate docket numbers PENN-2021-0036, PENN 2021-0037, and PENN 2021-0038 involving similar procedural issues. 29 C.F.R. § 2700.12.

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 assessments were delivered on January 11 and 13, 2021, and became final orders of the Commission on February 11 and 12, 2021 respectively. Consol asserts that that it timely mailed the contests to the Commission but that they were not received. While the Commission has no record of receiving any contests from the operator, the Secretary confirms that its St. Louis, Missouri collections office received partial payment from Consol for the uncontested penalties.² 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 to the correct address.³

Having reviewed Consol’s request and the Secretary’s response, we find that Consol’s failure to timely contest was due to an inadvertent mailing error and that the operator took prompt action to move to reopen these cases upon discovery of the error. 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.



Arthur R. Traynor, III, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner

² As the Secretary was unaware of which citations Consol wanted to contest, the partial payment was applied to the wrong citations. Consol asks that all the citations in the above-captioned dockets be reopened so that they can fix this error.

³ Notices of contest should not be mailed to the Commission but rather MSHA’s Civil Penalty Compliance Office, 201 12th Street South, Suite 401, Arlington, VA 22202.

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