

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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August 3, 2022

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. LAKE 2022-0069
	:	A.C. No. 12-02049-542961
v.	:	
	:	Docket No. LAKE 2022-0070
HARRISON SAND & GRAVEL CO.,	:	A.C. No. 12-01151-542959
INC.	:	

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. (2018) (“Mine Act”). On January 14, 2022, the Commission received from Harrison Sand & Gravel Co., Inc. (“Harrison”) two motions seeking to reopen two 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).

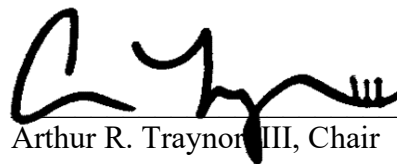
We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“*JWR*”). In evaluating requests to reopen final orders, the Commission 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 LAKE 2022-0069 and LAKE 2022-0070 because they involve similar factual and 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 both proposed assessments were delivered on October 7, 2021, and became final orders of the Commission on November 8, 2021. Harrison asserts that, on approximately October 19, 2021, it mistakenly sent both its notices of contest and partial penalty payments to the address for the payment of penalties, instead of correctly mailing the notices of contest to a separate address, as required by MSHA. The Secretary does not oppose the requests to reopen, but urges the operator to take steps to ensure that future penalty contests are timely filed.


Having reviewed Harrison’s requests and the Secretary’s responses, we find that the operator acted with excusable neglect by inadvertently mailing the notices of contest to the wrong address, despite doing so in a timely manner. In the interest of justice, we hereby reopen these matters and remand them 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 petitions for assessment of penalties 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



Mateo M. Rajkovich, Jr., Commissioner

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