

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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AUG 3 0 2018

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)	:	Docket No. WEST 2017-292-M A.C. No. 35-03532-416565
v.	:	Docket No. WEST 2018-269-M A.C. No. 35-03532-419038
CHAVARRIA CONSTRUCTION, INC.	:	

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 March 10, 2017, the Commission received from Chavarria Construction, Inc. (“Chavarria”) a motion 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 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

¹ For the limited purpose of addressing these motions to reopen, we hereby consolidate docket numbers WEST 2017-292-M and WEST 2018-269-M involving similar procedural issues. 29 C.F.R. § 2700.12.

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 for WEST 2017-292 M was delivered on August 10, 2016, and became a final order of the Commission on September 9, 2016. In addition, MSHA records indicate that the proposed assessment for WEST 2018-269-M was delivered on September 9, 2016 and became a final order of the Commission on October 11, 2016.

Chavarria asserts that it intended to contest portions of these assessments, and that it mailed the sheet entitled "Notice of Contest Rights" to Arlington, Virginia. However, the chart, indicating which violations an operator intends to contest, was mailed along with payment of the uncontested penalties, presumably to MSHA's St. Louis Payment Processing Center.² The Secretary supports the operator's reopening request so that the parties may enter into a settlement agreement in this matter.

Therefore, having reviewed Chavarria's request and the Secretary's response, we find that the operator's misunderstanding regarding where to send the chart was a mistake under Rule 60(b). 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.

² Contests of proposed penalties should be sent to the MSHA Civil Penalty Compliance Office in Arlington, Virginia, as indicated on the Notice of Contest Rights and Instructions, included with the proposed assessment.

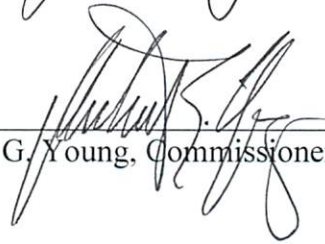
Accordingly, consistent with Rule 28, the Secretary shall file a petition for assessment of penalty within 45 days of the date of this order. See 29 C.F.R. § 2700.28.



William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

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