

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVE., N.W., SUITE 520N  
WASHINGTON, DC 20004-1710

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

AUG 30 2018

v.

ROCKWELL MINING, LLC

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:  
: Docket No. WEVA 2017-412  
: A.C. No. 46-09152-432866  
:  
:

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 May 26, 2017, the Commission received from Rockwell Mining, LLC (“Rockwell”) 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 to P.O. Box 57, Wharton, West

Virginia, on March 6, 2017, and became a final order of the Commission on April 5, 2017. A contest was filed on April 6, 2017, a day after the assessment became a final order of the Commission.

Rockwell concedes that MSHA mailed the proposed assessment to the P.O. Box and that the P.O. Box was not checked until March 21, 2017, a couple of weeks after the assessment was delivered. However, Rockwell claims that MSHA caused undue delay by sending the assessment to a P.O. Box rather than to its address of record, 54912 Pond Fork Road, Wharton, West Virginia 25208, and that this contributed to the delay in contesting the assessment. Furthermore, the operator claims that when the assessment was retrieved from the P.O. Box, it was given to a receptionist newly hired by the operator. Rockwell implies that the receptionist's inexperience with company policies further contributed to the delay in contesting the assessment.

The Secretary does not oppose the request to reopen and does not dispute Rockwell's claim that the assessment was not sent to the address of record. Therefore, we find that the assessment was erroneously delivered to an incorrect address and that Rockwell filed its contest only a day late.

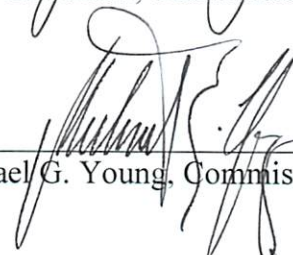
Having reviewed Rockwell's request and the Secretary's response, we find that Rockwell's failure to timely contest the assessment was excusable. In the interest of justice, we hereby reopen this matter and remand it to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act 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.



William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

**Distribution:**

**Todd C. Myers, Esq.  
Associate General Counsel  
Rockwell Mining, LLC  
3228 Summit Square Pl., Suite 180  
Lexington, KY 40609**

**Ali Beydoun, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
201 12th St. South, Suite 500  
Arlington, VA 22202-5450**

**Chief Administrative Law Judge Robert J. Lesnick  
Federal Mine Safety & Health Review Commission  
1331 Pennsylvania Ave. N.W., Suite 520N  
Washington, DC 20004-1710**

**Melanie Garris  
Office of Civil Penalty Compliance  
Mine Safety and Health Administration  
U.S. Department of Labor  
201 12th St. South, Suite 500  
Arlington, VA 22202-5450**