

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N
WASHINGTON, D.C. 20004-1710

September 8, 2021

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
 :
v. : Docket No. YORK 2021-0048
 : A.C. No. 30-02803-529358
CHAMPLAIN STONE, LTD. :
 :

BEFORE: Traynor, Chair; Althen and Rajkovich, 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 20, 2021, the Commission received from Champlain Stone, Limited (“Champlain”) 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).

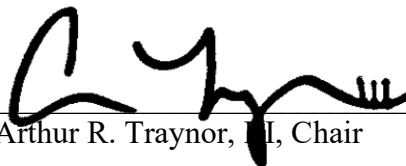
Under section 105(a), an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 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).

The Department of Labor's Mine Safety and Health Administration ("MSHA") indicates that the proposed assessment was delivered to the operator on February 11, 2021. The assessment became a final order of the Commission on March 13, 2021.

Champlain asserts that it timely submitted its contest of the citations on February 25, 2021, but that it erroneously mailed the contest to MSHA's St. Louis office along with its payment for other uncontested violations. It claims that it learned of its mistake when it received the April 30, 2021 delinquency letter from MSHA on May 4, 2021. Champlain has not filed any other motions to reopen with the Commission in the last two years. 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 in accordance with MSHA's regulations at 30 C.F.R. § 100.7 and the Commission's procedural rules.


Having reviewed Champlain's request and the Secretary's response, we find that the operator inadvertently mailed its contest form to MSHA's St. Louis office along with its uncontested penalty payments. 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, II, Chair



William I. Althen, Commissioner



Marco M. Rajkovich Jr., Commissioner

Distribution:

Heidi Williams,
Safety & Health,
Champlain Stone, Ltd.
PO Box 650
Warrensburg, NY 12885
hwilliams@catamountconsultingllc.com

Melanie Garris
USDOL/MSHA, OAASEI/CPCO
201 12th Street South, Suite 401
Arlington, VA 22202
Garris.Melanie@DOL.GOV

Archith Ramkumar
Counsel, Appellate Litigation
Office of the Solicitor
Division of Mine Safety and Health
U.S. Department of Labor,
201 12th Street South, Suite 401
Arlington, VA 22202-5452
ramkumar.archith@dol.gov

John M. McCracken, Esq.
Office of the Solicitor
Division of Mine Safety and Health
U.S. Department of Labor,
201 12th Street South, Suite 401
Arlington, VA 22202-5452
McCracken.John.M@dol.gov

April Nelson, Esq.
Office of the Solicitor
U.S. Department of Labor
201 12th Street South, Suite 401
Arlington, VA 22202-5452
Nelson.April@dol.gov

Chief Administrative Law Judge Glynn F. Voisin
Federal Mine Safety Health Review Commission
1331 Pennsylvania Avenue, NW Suite 520N
Washington, DC 20004-1710
GVoisin@fmshrc.gov