

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N

WASHINGTON, D.C. 20004-1710

April 08, 2014

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. CENT 2013-605-M
v.	:	A.C. No. 23-00457-325635-01
	:	
THE DOE RUN COMPANY	:	

BEFORE: Jordan, Chairman; Young, Cohen, Nakamura, and Althen, 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 December 4, 2013, The Doe Run Company (“Doe Run”) filed a motion seeking to reopen a penalty assessment proceeding and relieve it from the default order entered against it.

On September 5, 2013, the Chief Administrative Law Judge issued an Order to Show Cause which by its terms became a Default Order if the operator did not file an answer within 30 days. This Order to Show Cause was issued in response to Doe Run’s failure to answer the Secretary’s July 26, 2013 Petition for Assessment of Civil Penalty. The Commission did not receive Doe Run’s answer within 30 days, so the default order became effective on October 7, 2013.

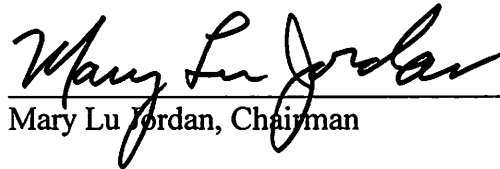
Doe Run asserts that its safety director resigned on October 4, 2013, and its new safety director discovered the delinquency after receiving the Secretary’s Substitution of Counsel notice, dated November 12, 2013. The Secretary does not oppose the request to reopen, and urges the operator to take steps to ensure that future answers are timely filed.

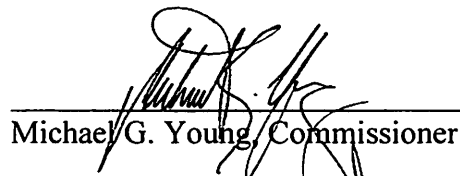
The judge’s jurisdiction in this matter terminated when the default occurred. 29 C.F.R. § 2700.69(b). Under the Mine Act and the Commission’s procedural rules, relief from a judge’s decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2)(A)(i); 29 C.F.R. § 2700.70(a). If the Commission does not direct review within 40 days of a decision’s issuance, it becomes a final decision of the

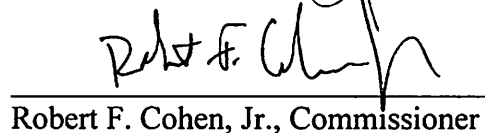
Commission. 30 U.S.C. § 823(d)(1). Consequently, the judge's order here has become a final decision of the Commission.

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"); *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993). 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).

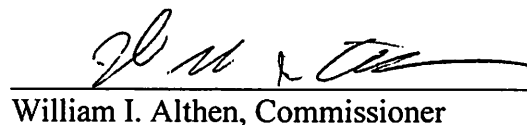
Having reviewed Doe Run's request and the Secretary's response, in the interest of justice, we hereby reopen the proceeding and vacate the Default Order. Accordingly, because this case was assigned to Administrative Law Judge Margaret Miller, we are remanding it to her for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.

  
Mary Lu Jordan, Chairman

  
Michael G. Young, Commissioner

  
Robert F. Cohen, Jr., Commissioner

  
Patrick K. Nakamura, Commissioner

  
William I. Althen, Commissioner

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