

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N

WASHINGTON, D.C. 20004-1710

April 4, 2013

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. LAKE 2011-913-M
ADMINISTRATION (MSHA)	:	A.C. No. 47-02872-260930
	:	
v.	:	Docket No. LAKE 2011-914-M
	:	A.C. No. 47-02872-260930
MOUNTAIN STONE CORPORATION	:	

BEFORE: Jordan, Chairman; Young and Nakamura, 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. (2006) (“Mine Act”). On October 3, 2012, the Commission received from Mountain Stone Corporation (“Mountain”) a motion seeking to reopen two penalty assessment proceedings and relieve it from the default orders entered against it.¹

On January 10, 2012, Chief Administrative Law Judge Lesnick issued two Orders to Show Cause which by their terms became Default Orders if the operator did not file an answer within 30 days. These Orders to Show Cause were issued in response to Mountain’s failure to answer the Secretary of Labor’s September 7, 2011 Petitions for Assessment of Civil Penalty. The Commission did not receive Mountain’s answers within 30 days, so the default orders became effective on February 10, 2012.

Mountain asserts that it never received the penalty petitions or Show Cause Orders and that they were returned undelivered. Mountain states that it learned of this problem on September 26, 2012, after it was contacted by the Department of Treasury. Mountain further states that it has now changed its address of record to its president’s home address. The Secretary does not oppose the requests to reopen and notes that Mountain had requested a change of address on September 26, 2012. The Secretary urges the operator to ensure that its address of record is accurate and future mailings can be received at that address.

¹ Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers LAKE 2011-913-M and LAKE 2011-914-M, both captioned *Mountain Stone Corporation*, and involving similar procedural issues. 29 C.F.R. § 2700.12.

Having reviewed Mountain's request and the Secretary's response, we conclude that these cases should be reopened because the operator did not receive the Show Cause Orders. Accordingly, these cases are remanded 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.

/s/ Mary Lu Jordan
Mary Lu Jordan, Chairman

/s/Michael G. Young
Michael G. Young, Commissioner

/s/ Patrick K. Nakamura
Patrick K. Nakamura, Commissioner

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