

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N

WASHINGTON, D.C. 20004-1710

October 31, 2013

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. SE 2012-104-M
v.	:	A.C. No. 40-03106-270562 A
	:	
WELDON STACKINS, employed by	:	
TENNESSEE MATERIALS CORP.	:	

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. (2006) (“Mine Act”). On May 9, 2013, the Commission received from a representative of Weldon Stackins (“Stackins”), a former employee of Tennessee Materials Corp. (“Tennessee Materials”), a motion seeking to reopen a penalty assessment proceeding and relieve him from the default order entered against him.

On July 24, 2012, Chief Administrative Law Judge Lesnick issued an Order to Show Cause which by its terms became a Default Order if Stackins did not file an answer within 30 days. This Show Cause Order was issued in response to Stackins’ failure to answer the Secretary’s January 12, 2012 Petition for Assessment of Civil Penalty.

Stackins asserts that he terminated his employment with Tennessee Materials in March 2010, and that Tennessee Materials never forwarded any mail to him despite his attempts to obtain information regarding this case. Stackins states that he learned of the delinquency upon Tennessee Materials’ filing for bankruptcy, after being contacted by a Department of Treasury collection agency. The Secretary does not oppose the request to reopen, and notes that all documents were mailed to Stackins at the Tennessee Materials’ address.

Pursuant to Commission Procedural Rule 66, an order to show cause shall be mailed to the party by registered or certified mail, return receipt requested, before the entry of any order of default or dismissal. 29 C.F.R. § 2700.66. Having reviewed Stackins' request and the Secretary's response, we conclude that Stackins did not receive the penalty petition and Show Cause Order, and therefore a Default Order has not been effectively entered. Accordingly, this case is 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/ Robert F. Cohen, Jr.  
Robert F. Cohen, Jr., Commissioner

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

/s/ William I. Althen  
William I. Althen, Commissioner

Distribution:

Weldon Stackins  
1130 Childers Hill Drive  
Michie, Tennessee 38357

Paul Scott  
2407 CR 24  
Florence, AL 35633  
[paul.scott5@comcast.net](mailto:paul.scott5@comcast.net)

Jason Grover, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
1100 Wilson Blvd., 22<sup>nd</sup> Floor West  
Arlington, VA 22209-2247

Melanie Garris  
Office of Civil Penalty Compliance  
MSHA  
U.S. Dept. Of Labor  
1100 Wilson Blvd., 25<sup>th</sup> Floor  
Arlington, VA 22209-3939

W. Christian Schumann, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
1100 Wilson Blvd., Room 2220  
Arlington, VA 22209-2296

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