

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N

WASHINGTON, D.C. 20004-1710

November 5, 2013

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEST 2012-1177-M
v.	:	A.C. No. 26-00500-293069 1WA
	:	
NORTHAMERICAN INDUSTRIAL	:	
SERVICES, INC.	:	

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 June 27, 2013, the Commission received from NorthAmerican Industrial Services, Inc. (“NorthAmerican”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the default order entered against it.

On February 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 NorthAmerican’s perceived failure to answer the Secretary’s August 22, 2012 Petition for Assessment of Civil Penalty.

NorthAmerican asserts that it timely answered the penalty petition and encloses a copy mailed to MSHA on September 20, 2012. NorthAmerican further states that it responded to the Show Cause Order by email to the Commission’s Docket office on February 7, 2013. The Secretary does not oppose the request to reopen, and notes that MSHA received NorthAmerican’s answer to the penalty petition.

Having reviewed NorthAmerican's request and the Secretary's response, we conclude that the Default Order did not effectively become a final order of the Commission because the operator filed a timely response to the Show Cause Order. 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

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