

**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. WEVA 2011-2202
v.	:	A.C. No. 46-08812-260211
	:	
GLEN ALUM OPERATIONS, LLC	:	

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 2, 2013, the Commission received from Glen Alum Operations, LLC (“Glen Alum”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the default order entered against it.

On August 13, 2012, 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 Glen Alum’s perceived failure to answer the Secretary’s September 1, 2011 Petition for Assessment of Civil Penalty.

Glen Alum asserts that it timely answered the penalty petition and submits a copy of the answer date-stamped by the Commission as received on September 23, 2011. Glen Alum also submits a copy of its email to the Commission on August 16, 2012, in response to the Show Cause Order. The Secretary does not oppose the request to reopen.

Having reviewed Glen Alum'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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Chief Administrative Law Judge Robert J. Lesnick  
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