FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

May 16, 2024

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. LAKE 2019-0317-M
	:	
WESTFALL AGGREGATE	:	
& MATERIALS, INC.	:	

BEFORE: Jordan, Chair; Althen, Rajkovich, Baker, and Marvit, Commissioners

DECISION

BY THE COMMISSION:

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) ("Mine Act") and comes to the Commission on remand from the United States Court of Appeals for the D.C. Circuit. *Sec'y of Labor v. Westfall Aggregate & Materials, Inc.,* 69 F.4th 902 (D.C. Cir. 2023). The Court directed the Commission to review our conclusion that a motion filed by Westfall Aggregate & Materials, Inc. ("Westfall") to reopen a final order assessing a penalty was moot. The Court ruled that the Commission must determine whether Westfall had demonstrated its entitlement to extraordinary relief. *Id.* at 915. Consistent with the Court's decision and our analysis of the facts, we deny the motion to reopen on remand.

I.

Factual and Procedural Background

This case concerns two enforcement actions by the Mine Safety and Health Administration ("MSHA") – Citation No. 6559330 and Order No. 6559329 – both issued on February 28, 2011. The $16,400 proposed special assessment for the Citation was received by the operator on July 20, 2011. 69 F.4th at 908, 909; Att. A to Sec's Opp. The operator failed to notify the Secretary of its intent to contest the assessment within 30 days of July 20, 2011. Therefore, according to the Secretary, the assessment became a final order on August 19, 2011. Westfall received a delinquency notice regarding this penalty on October 6, 2011.

On July 12, 2019, almost eight years later, the operator filed a motion to reopen the final Commission order. The Secretary opposed the request to reopen. The Commission found that the proposed assessment never effectively became a final

Commission order, and therefore concluded that the operator's motion to reopen was moot. 44 FMSHRC 369 (May 2022). The Secretary appealed the Commission's order to the D.C. Circuit. The Court concluded that the penalty assessment became a final order on August 19, 2011. 69 F.4th at 908, 909, 914. Therefore, the D.C. Circuit found that the matter was not moot, and reversed and remanded the matter to the Commission. *Id.* at 915. In remanding the matter, the D.C. Circuit found that "the Commission failed to assess whether Westfall could 'carry the burden of establishing its entitlement to extraordinary relief.'" *Id*.

II.

Disposition

Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a). In evaluating requests to reopen final orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure. *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, 787 (May 1993).

Due to the extraordinary nature of reopening a penalty that has become final, the operator has the burden of showing that it should be granted such relief through a detailed explanation of its failure to timely contest the penalty and any delays in filing for reopening. Further, Rule 60(c) provides that a Rule 60(b) motion shall be made within a reasonable time, and for reasons enumerated in Rule 60(b)(1)), *i.e. "*mistake, inadvertence, or excusable neglect," not more than one year after the judgment, order, or proceeding was entered or taken. Fed. R. Civ. P. 60(c).

The federal district courts have strictly observed this one-year time limit. In *Wright v. Poole,* the court held that because "[the] Motion is really a Rule 60(b)(1) motion . . . the Motion must be brought within the 'absolute' outer limit of one year." 81 F.Supp.3d 280 (S.D.NY 2014) *(citing Martha Graham Sch. & Dance Found.,* 466 F.3d 97, 100 (2d Cir. 2006) ("[t]he one-year limitation period for Rule 60(b) motions is absolute")). And in *Goff v. Walters,* 2024 WL 1722251 (E.D. Cal. 2024), the court recently held that "Rule 60(b)(1) authorizes courts to relieve parties from a final judgment or order for "mistake, inadvertence, surprise, or excusable neglect [and t]he decision on a Rule 60(b)(1) motion lies with the sound discretion of the court." The court concluded that the "motion is untimely under Rule 60(b)(1) as it is brought more than a year after the entry of the order of dismissal." *Id.*

Similarly, we have consistently enforced the one-year time limit for motions to reopen where the operator seeks reopening based on mistake, inadvertence, surprise, or excusable neglect. Specifically, we have held that "motions to reopen alleging mistake, inadvertence or excusable neglect must be made no more than a year after entry of the

final order." *Leesville Land*, 2024 WL 893571 (Feb. 2024) *citing JS Sand & Gravel, Inc.* 26 FMSHRC 795, 796 (Oct. 2004); *Stony Creek Quarry Corp.,* 44 FMSHRC 366 (May 2022); *Apogee Coal Co.,* 38 FMSHRC 32 (Jan. 2016); *Four Corners Materials,* 37 FMSHRC 1150 (June 2015).

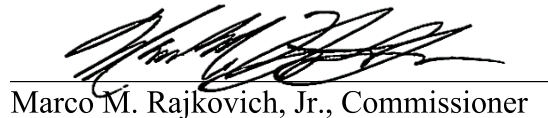
As recognized by the D.C. Circuit, Westfall claimed that "excusable neglect, mistake, inadvertence, and other good causes" justified reopening this matter. 69 F.4th at 912. In its motion to reopen, the operator contended that its confusion regarding Citation No. 6559330 and Order 6559329 "resulted in an inadvertent and mistaken interpretation and treatment" of Citation 6559330 "by Petitioner [operator] and its staff." MTR at 5 (emphasis added). The operator also claimed that "such inadvertence and mistakes constitute excusable neglect on the part of Petitioner." *Id.* (emphasis added).

Accordingly, under our precedents, the operator's reopening request is subject to the one-year rule. In addition, it is undisputed that the operator filed its request to reopen in July 2019, almost eight years after the final order of August 19, 2011. MTR at 1; 69 F.4th at 909, 914. Consequently, the motion for relief was untimely filed more than a year after entry of the final order.

Westfall's motion to reopen is hereby **DENIED.**

Mary Lu Jordan, Chair

William I. Althen, Commissioner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