

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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June 16, 2020

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. WEST 2019-0380-R
	:	
v.	:	Docket No. WEST 2020-0014
	:	A.C. No. 42-00089-496617
CANYON FUEL COMPANY, LLC	:	

BEFORE: Rajkovich, Chairman; Jordan, Young, Althen, and Traynor, Commissioners

DIRECTION FOR REVIEW, DECISION, AND ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On October 8, 2019, the Commission received from Canyon Fuel Company, LLC (“Canyon Fuel”) a motion seeking to reopen a penalty assessment that had become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a); the motion to reopen was docketed in Docket No. WEST 2020-0014.

On June 10, 2020, the Commission received from Canyon Fuel a petition for discretionary review (“PDR”) of the Judge’s order dismissing Docket No. WEST 2019-0380-R, a related contest proceeding involving the underlying citation to the penalty assessment at issue in Docket No. WEST 2020-0014. Order dated May 11, 2020. In Docket No. WEST 2019-0380-R, Canyon Fuel notified the Judge of the still pending motion to reopen. The Judge concluded, however, that the penalty assessment had become a final order and dismissed the contest regarding the related citation as moot.

Having reviewed the pleadings, we grant Canyon Fuel’s request to reopen the penalty assessment in Docket No. WEST 2020-0014. Accordingly, we hereby also grant its Petition for Discretionary Review of Docket No. WEST 2019-0380-R and vacate and reverse the Judge’s order in that case.¹ We also consolidate the contest and penalty proceedings and remand for further proceedings.

¹ There have been previous instances in which the pendency of a motion to reopen before the Commission has delayed a related case before a Judge from moving forward. In those instances, the Office of the Chief Administrative Law Judge has communicated to the Commission the need for prompt action on the motion to reopen. Since that process has proven successful, we would urge Judges to avail themselves of it in cases such as this. A Judge also can stay a related case while he or she waits for the Commission to act on a motion to reopen.

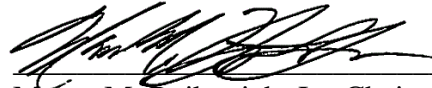
Regarding the motion to reopen, under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a).

We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“*JWR*”). In evaluating requests to reopen final orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure, under which the Commission may relieve a party from a final order of the Commission on the basis of mistake, inadvertence, excusable neglect, or other reason justifying relief. *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”); *JWR*, 15 FMSHRC at 787. We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessment was delivered on August 8, 2019, and became a final order of the Commission on September 9, 2019. Canyon Fuel asserts that it mistakenly sent the contest form for Assessment No. 000496617 along with partial payment to the MSHA payment office in St. Louis, instead of MSHA’s Civil Penalty Compliance Office in Arlington, Virginia. Canyon Fuel further states that it had filed a notice of contest for Citation No. 8537643, docketed at WEST 2019-0380-R, and intended to contest the proposed assessments for both that citation and related Order No. 8537644, but erroneously failed to submit its penalty contest to the correct MSHA office. The Secretary does not oppose the request to reopen, but urges the operator to take steps to ensure that future penalty contests are timely filed.

Having reviewed Canyon Fuel’s request and the Secretary’s response, we find that the operator intended to contest both violations and the proposed assessment, but mistakenly sent the form to the wrong MSHA office, and timely filed its motion to reopen upon discovering its error. In the interest of justice, we hereby reopen this matter and remand it 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.

Accordingly, consistent with Rule 28, the Secretary shall file a petition for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.



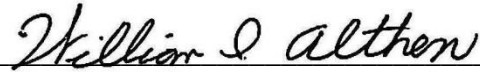
Marco M. Rajkovich, Jr., Chairman



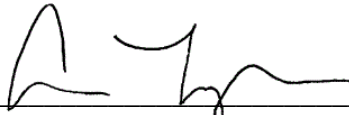
Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



William I. Althen, Commissioner



Arthur R. Traynor, III, Commissioner

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