FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, D.C. 20004-1710

October 1, 2024

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. WEVA 2024-0035
	:	A.C. No. 46-09018-580277
ACTIVE RESOURCES, INC.	:	

BEFORE: Jordan, Chair; Baker and Marvit, 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. (2018) ("Mine Act"). On October 24, 2023, the Commission received from Active Resources, Inc. ("Active") 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).

Under section 105(a), 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).

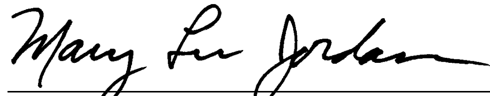
The Department of Labor's Mine Safety and Health Administration ("MSHA") indicates that the proposed assessment was delivered to the operator on July 10, 2023. The assessment became a final order of the Commission on August 9, 2023.

Active states that it became the operator of the No. 8 Mine in October 2021. The Mine, which has not produced any coal since Active's acquisition, is currently in non-producing status with MSHA and in the process of being rehabilitated. Active acquired the Mine with the understanding that before production could start, rehabilitation work would be required including regarding matters relating to the underlying citation. Since becoming operator of the Mine, Active has worked with MSHA on submission and approval of various plans and proposals to conduct rehabilitation work simultaneously with the ongoing exploration of the mine. Active finally received MSHA's approval to conduct rehabilitation work at the Mine around August 2023.

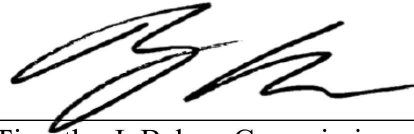
The underlying citation was issued on May 25, 2023, while the mine was undergoing exploration and prior to MSHA's rehabilitation plan approval, which included the cited area. Active asserts that it was unable to abate any violations until the area was rehabilitated and rendered safe for miners to work and travel. When the citation was issued, although Active had defenses to the citation, it elected to pay the citation because it believed it had been considered abated with the assessment of the penalty. A delinquency notice was sent to the operator on September 25, 2023, and MSHA received full payment of the assessment on September 26, 2023. MSHA issued a section 104(b) order to Active on October 3, 2023, for its failure to timely abate the citation, which the operator has contested.

Active maintains that had it known the citation was not abated and that the operator was subject to a future section 104(b) order, it would have contested the assessment and not paid the penalty. 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 in accordance with MSHA's regulations at 30 C.F.R. § 100.7 and the Commission's procedural rules.

Having reviewed Active's request and the Secretary's response, we conclude that its failure to timely file its contest was not due to mistake, inadvertence, or excusable neglect as required by Rule 60(b). The operator's failure to contest was intentional and was instead due to its own self-proclaimed ignorance of the law. However, Courts have held that "ignorance. . . on the part of the litigant or his attorney [cannot] provide grounds for relief under Rule 60(b)(1)." *Kagan v. Caterpillar Tractor Co*., 795 F.2d 601, 607 (7th Cir. 1986) *cited by Egleson v. Burington Northern R. Co*., 972 F.2d 1038 (9th Cir. 1992). *See also* § 2858 Mistake, Inadvertence, Surprise, or Excusable Neglect, 11 Fed. Prac. & Proc. Civ. § 2858 (3d ed.) ("Ignorance of the rules is not enough to support relief from a judgment, nor is ignorance of the law."). The operator has failed to establish good cause for reopening the above-referenced case. Accordingly, Active's motion to reopen is denied with prejudice.



Mary Lu Jordan, Chair



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