

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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October 8, 2024

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
 : Docket No. KENT 2023-0084
v. : A.C. No. 15-19744-569065
 :
MUHLENBERG COUNTY COAL :
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 May 16, 2023, the Commission received from Muhlenberg County Coal Resources, Inc. (“Muhlenberg”) 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) 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 January 11, 2023, and became a final order of the Commission when the operator failed to contest it. Muhlenberg, however, asserts that the proposed assessment was never delivered on January 11, 2023. According to the operator, it filed its motion to reopen promptly once it discovered the penalty amounts were delinquent, on May 5, 2023. The operator claims it immediately investigated as to what happened to cause the delinquency. It discovered that the delivery of the assessment was not made because, according to the U.S. Postal Service ("USPS"), there was no authorized recipient available at the facility when the mail arrived.

The operator states that this mailing misdelivery incident is under investigation. It further claims that it has since initiated corrective measures to reduce the likelihood of future delinquencies and reinforce the importance of proposed assessments to its employees, and that such occurrences are uncommon. Muhlenberg urges that the case should be reopened because after learning of the delinquency and misdelivery of the assessment, it took prompt steps to reopen the case, to be allowed to contest the citations. 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.

We note that the USPS left notice of the citation twice at Muhlenberg's mailing address, on January 11 and February 17, 2023. It is unclear why the operator did not take steps to retrieve the citation after the first notice. We do not construe this to be a mistake by USPS in delivery because it is not the case that the citation was lost in the mail or sent to the wrong address. Rather, the letter carrier did not have someone to leave the citation with, so it left notice twice that delivery was attempted. The operator cannot ignore these notices and then claim there was a misdelivery on the part of USPS. Furthermore, an operator has an obligation to monitor its address of record. Here, it failed to do so. As such, we hold that Muhlenberg's mail collection and processing procedures are inadequate. *See, e.g., Oak Grove Res., LLC*, 33 FMSHRC 103, 104 (Feb. 2011); *Double Bonus Coal Co.*, 32 FMSHRC 1155, 1156 (Sept. 2010); *Elk Run Coal Co.*, 32 FMSHRC 1587, 1588 (Dec. 2010); *Highland Mining Co.*, 31 FMSHRC 1313, 1315 (Nov. 2009); *Pinnacle Mining Co.*, 30 FMSHRC 1066, 1067 (Dec. 2008); *Pinnacle Mining Co.*, 30 FMSHRC 1061, 1062 (Dec. 2008) (denying motions to reopen when failures to timely contest resulted from inadequate internal processing procedures). An operator needs to make arrangements to receive certified mail and collect attempted deliveries, and Muhlenberg failed to do so here.

Accordingly, we deny Muhlenberg's motion.



Mary Lu Jordan, Chair



Timothy J. Baker, Commissioner



Moshe Z. Marvit, Commissioner

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