

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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WASHINGTON, DC 20004-1710

**October 15, 2024**

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. SE 2024-0135
v.	:	A.C. No. 09-01228-593452A
	:	
KEVIN COLEMAN, formerly employed	:	
by CARMEUSE LIME	:	

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. (2012) (“Mine Act”). On April 4, 2024, the Commission received a motion from Kevin Coleman seeking to reopen a penalty assessment under section 110(c) of the Mine Act, 30 U.S.C. § 820(c), that had become a final order of the Commission.

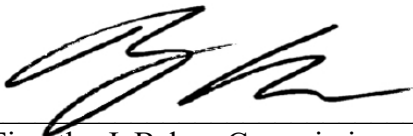
On June 29, 2022, the Mine Safety and Health Administration (“MSHA”) issued Citation No. 9701264 to Carmeuse Lime for an alleged safety violation at its Talona Mountain Mine. Subsequently, MSHA instigated a special investigation against Coleman, the mine supervisor, in connection with the aforementioned citation. On January 17, 2024, MSHA requested a mailing address for Coleman and was informed that anything related to the case should be sent to his counsel. However, on January 31, 2024, MSHA issued a proposed penalty assessment to Coleman and attempted to serve the assessment to the mine site.

MSHA records indicate that the Talona Mountain Mine was listed as abandoned as of December 12, 2023. The mine was closed, and Coleman was no longer employed at that location. Unsurprisingly, when service of the proposed assessment was attempted, USPS could not deliver the assessment and it was promptly returned to sender. MSHA made no further attempt to remedy the faulty service attempt.

Having reviewed Coleman’s request and the Secretary’s response, we conclude that the proposed penalty assessment did not become a final order of the Commission because it was never served on Coleman. The Commission has held that when an assessment is sent to the wrong address, it does not become a final order, so a request to reopen it is moot. *See Petra*

*Materials*, 32 FMSHRC 1113, 1116 (Sept. 2010); *American Sand Co. LLC*, 42 FMSHRC 767 (Oct. 2020) (applying this principle to an order of default when the Chief Judge's order to show cause was sent to the wrong address). This obviates any need to invoke Rule 60(b). Accordingly, the Coleman's motion to reopen is moot, and 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.

  
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Mary Lu Jordan, Chair

  
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Timothy J. Baker, Commissioner

  
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Moshe Z. Marvit, Commissioner

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