

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710

October 19, 2020

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. WEVA 2020-0195
ADMINISTRATION (MSHA)	:	A.C. No. 46-09091-503553
	:	
v.	:	Docket No. WEVA 2020-0205
	:	A.C. No. 46-09212-503556
MARFORK COAL COMPANY, LLC	:	
	:	Docket No. WEVA 2020-0206
	:	A.C. No. 46-09550-503558
	:	

BEFORE: Rajkovich, Chairman; Althen and Traynor, 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 January 9 and 10, 2020, the Commission received from Marfork Coal Company (“Marfork”) motions seeking to reopen penalty assessments that had become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).¹

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

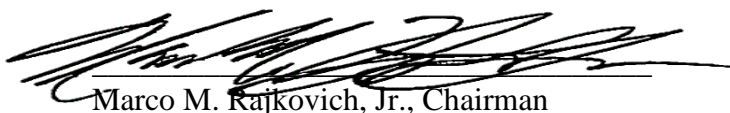
¹ For the limited purpose of addressing these motions to reopen, we hereby consolidate docket numbers WEVA 2020-0195, WEVA 2020-0205 and WEVA 2020-0206 involving similar procedural issues. 29 C.F.R. § 2700.12.

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 assessments were delivered on November 13, 2019, and became final orders of the Commission on December 13, 2019. Marfork asserts that the employee responsible for processing the notices of contest missed the mailing deadline because she was out of the office in early December due to an unforeseen medical issue. Upon her return to work, she realized the notices had not been timely filed and contacted counsel. Motions to reopen the captioned dockets were then filed within 30 days. 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 Marfork's request and the Secretary's response, we find that the delay in this instance was an excusable mistake arising from unforeseen circumstances. To prevent such a mistake from recurring, however, we urge the operator to enact procedures that will ensure penalty contests are timely processed even when the normally responsible individual is unavailable.

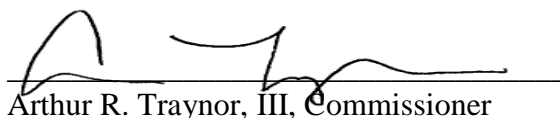
In the interest of justice, we hereby reopen these matters and remand them to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700. Accordingly, consistent with Rule 28, the Secretary shall file a petition for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.



Marco M. Rajkovich, Jr., Chairman



William I. Althen, Commissioner



Arthur R. Traynor, III, Commissioner

Distribution:

Christopher D. Pence, Esq.
Hardy Pence PLLC
10 Hale Street, 4th floor
P.O. Box 2548
Charleston, WV 25329
cpence@hardypence.com

Emily Scott, Esq.
Office of the Solicitor
201 12th St. South, Suite 401
Arlington, VA 22202-5450
Scott.Emily.T@dol.gov

April Nelson, Esq.
Office of the Solicitor
US Department of Labor
201 12th St. South, Suite 401
Arlington, VA 22202-5450
nelson.april@dol.gov

Chief Administrative Law Judge Glenn Voisin
Federal Mine Safety & Health Review Commission
1331 Pennsylvania Ave., N.W., Suite 520N
Washington, DC 20004-1710
GVoisin@fmshrc.gov

Melanie Garris
Office of Civil Penalty Compliance
Mine Safety and Health Administration
201 12th Street South, Suite 401
Arlington, VA 22202
Garris.Melanie@DOL.GOV