FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

SECRETARY OF LABOR,	**October 20, 2020**	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. WEVA 2020-0162
	:	A.C. No. 46-0957-503864
v.	:	
	:	Docket No. WEVA 2020-0163
RAW COAL MINING CO., INC.	:	A.C. No. 46-06265-503849
	:	

BEFORE: Rajkovich, Chairman; Althen and Traynor, Commissioners

ORDER

BY THE COMMISSION:

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) ("Mine Act"). On December 26, 2019, the Commission received from Raw Coal Mining Co., Inc., ("Raw Coal") two 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 observed that default is a harsh remedy and that, if the defaulting party can make a showing of

[1] The two motions addressed in this order rely upon the same rationale and common facts as a basis for re-opening. For the limited purpose of addressing these motions to reopen, we hereby consolidate these dockets, which involve similar procedural issues. 29 C.F.R. §2700.12.

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 November 18, 2019, and became a final order of the Commission on December 19, 2019. The motions say that the contests of the proposed assessments in these matters were both prepared and mailed by regular mail in the same envelope on November 21, 2019. The representative says in his motion that he discovered that neither case had been recorded as "contested" during a routine search of MSHA's database, and he filed the instant motions to re-open on Dec. 26 – one week after both of these assessments had become final orders of the Commission.[2]

The Secretary does not oppose the requests to reopen, but he rightly characterizes the representative's office procedures as "inadequate," and urges the operator to take steps to ensure that future penalty contests are timely filed.

Having reviewed Raw Coal's requests and the Secretary's responses, we find that the operator has moved promptly for relief. The motion is well-documented and has candidly explains the failure to timely contest the citations at issue. The representative is appropriately contrite in admitting his error. In light of the pro-active discovery of the error, the swift action once the default was noted, the operator's demonstrated good faith in paying the uncontested penalties promptly, and the Secretary's non-opposition, we find that the motion has demonstrated good cause for reopening. However, the operator should heed the Secretary's admonition against the carelessness reflected in this case[3] and take seriously its responsibilities under the Act, or future motions relying on a similar excuse may be denied.

[2] In support of his motion, the representative also notes that the operator paid part of the penalties due in WEVA-2020-0163. MSHA's records reflect that this payment of $1351 was received on November 21, within the 30-day contest period.

[3] The operator's representative said he decided not to use certified mail "due to the low penalties in the two contested cases." Leaving aside the fact that a client's legal matters, once entrusted to a party's representative, are *all* important and deserving of professional management, the penalties in these two dockets totaled more than $7,000.

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

William I. Althen, Commissioner

Arthur R. Traynor, III, Commissioner

Distribution (by e-mail):

James F. Bowman
Representative
Raw Coal Mining Co., Inc.
P.O. Box 99
Midway, WV 25878
jimbowman61@hotmail.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