FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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October 20, 2020

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)	:	
	:	Docket No. WEVA 2020-0178
v.	:	A.C. No. 46-01433-500733
MARION COUNTY COAL COMPANY	:	

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 December 9, 2019, the Commission received from Marion County Coal Company ("Marion County Coal") 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 October 8, 2019, and became

a final order of the Commission on November 8, 2019. Marion County Coal's motion says that it mailed an amended notice of contest to MSHA's payment office in St. Louis, along with the payment of uncontested penalties, on October 24.[1] It contacted MSHA on November 19 and was told the amended notice of contest had not been accepted because it had been mailed to St. Louis. The operator immediately mailed the notice of contest to MSHA's Civil Penalty Compliance Office. MSHA sent the operator a delinquency notice on December 23, and the operator filed its motion to reopen on January 2, 2020.

The Secretary does not oppose the request to reopen. The Secretary's response notes that the operator's motion claims to have sent notices of contest to St. Louis routinely for 18 months, and that the forms were accepted, but he notes that "the proposed assessment clearly provides instructions to mail any contest forms to the Civil Penalty Compliance Office, in Arlington, VA, for processing." He urges the operator to take steps to ensure that future assessments are timely contested by mailing the forms to the address provided.

Having reviewed Marion County Coal's request and the Secretary's response, we find that the operator has sufficiently explained its failure to timely contest the citations at issue as the result of mistake, inadvertence, and excusable neglect. We therefore find it unnecessary to address the operator's suggestion that submitting the amended contest form to MSHA might be sufficient to confer jurisdiction upon the Commission.[2]

[1] The operator's motion says that the initial notice of contest was also mailed to St. Louis, on October 16, and that MSHA nevertheless accepted the form and noted the contest. The amended notice added citations and orders to those originally contested in the accepted notice.

[2] While the proposed assessment form does clearly instruct operators to send contest-related documents to Arlington, and payments to St. Louis, the mistake the operator made in this case is unfortunately common. It is not unreasonable to question whether there might be an alternate way of administering the contest and payment process that is less likely to repeatedly result in many filers making this same error.

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

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