

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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October 21, 2024

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. CENT 2024-0139
v.	:	A.C. No. 29-02544-589067
	:	
COYOTE GRAVEL PRODUCTS, 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 February 20, 2024, the Commission received from Coyote Gravel Products, Inc. (“Coyote Gravel”) 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 November 20, 2023, and became a final order of the Commission on December 20, 2023. A delinquency notice was mailed to the operator on February 5, 2024.

Coyote Gravel asserts that the proposed assessment was not timely contested due to “internal error.” The operator states that the General Manager typically processes assessments but neglected to submit the completed contest paperwork in this instance, and that it has since corrected its procedures to ensure future assessments are timely contested. The Secretary opposes the motion to reopen, on grounds that the operator has provided an insufficient level of detail to justify relief.

A party seeking to reopen a final penalty bears the burden of showing that it is entitled to such relief, through a detailed explanation of its failure to timely respond. *Revelation Energy, LLC*, 40 FMSHRC 375, 375-76 (Mar. 2018). General assertions or conclusory statements are insufficient. *Southwest Rock Prod., Inc.*, 45 FMSHRC 747, 748 (Aug. 30, 2023); *B & W Res., Inc.*, 32 FMSHRC 1627, 1628 (Nov. 2010). At a minimum, the applicant must provide all known details, including relevant dates and persons involved, and a clear explanation that accounts, to the best of the operator’s knowledge, for the failure to submit a timely response. *Higgins Stone Co.*, 32 FMSHRC 33, 34 (Jan. 2010). Here, Coyote Gravel provides conclusory statements that the assessment was not timely contested due to internal error and neglect, without identifying the error or the cause of the neglect. The operator also fails to specify what steps it has taken to ensure the error does not recur. While we recognize the operator’s promptness in moving to reopen once it learned the assessment had become final, Coyote Gravel’s assertions are insufficient to explain its failure to timely contest the assessment or to determine whether that failure was excusable.

Having reviewed Coyote Gravel’s request and the Secretary’s response, we find that the operator has not provided sufficient explanation to justify reopening the captioned proceeding.

Accordingly, we deny Coyote Gravel’s motion.


Mary Lu Jordan, Chair


Timothy J. Baker, Commissioner


Moshe Z. Marvit, Commissioner

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