

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

OCT 27 2016

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),

v.

BLUFF CITY MINERALS,

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:
:
: Docket No. LAKE 2014-0393-M
: A.C. No. 11-00122-347386
:
:

BEFORE: Jordan, Chairman; Young, Cohen, and Althen, 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 July 1, 2015, the Commission received from Bluff City Minerals, LLC (“Bluff”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On July 30, 2014, the Chief Administrative Law Judge issued an Order to Show Cause in response to Bluff’s failure to answer the Secretary of Labor’s April 25, 2014 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on September 2, 2014, when it appeared that the operator had not filed an answer with the Judge within 30 days.

Bluff claims that it timely responded to the Order to Show Cause on August 14, 2014, and filed an answer to the Secretary’s petition. The parties then continued to litigate the case until June 15, 2015, when Administrative Law Judge Alan Paez’s law clerk informed them that the files showed that the case had been administratively closed. The records also indicated that the citation had been paid. Bluff states that it may have inadvertently paid the penalty in response to a phone call from MSHA informing it that penalties were delinquent.

The Secretary does not oppose the request to reopen and confirms receipt of the timely answer dated August 14, 2014. However, he notes that there is no indication that the operator ever forwarded the answer to the Chief Administrative Law Judge.

The Judge’s jurisdiction in this matter terminated when the default occurred. 29 C.F.R. § 2700.69(b). Under the Mine Act and the Commission’s procedural rules, relief from a judge’s decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2)(A)(i); 29 C.F.R. § 2700.70(a). If the Commission does not

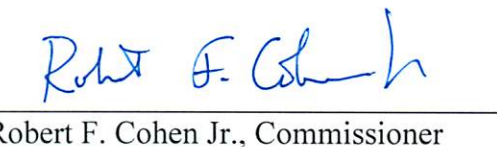
direct review within 40 days of a decision's issuance, it becomes a final decision of the Commission. 30 U.S.C. § 823(d)(1). Consequently, the Judge's order here has become a final decision of the Commission.

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"); *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993). 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 will be permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Having reviewed Bluff's request and the Secretary's response, in the interest of justice, we hereby reopen the proceeding and vacate the Default Order. Accordingly, 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.


Mary Lu Jordan, Chairman


Michael G. Young, Commissioner


Robert F. Cohen Jr., Commissioner


William I. Althen, Commissioner

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