

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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OCT 27 2016

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

v.

CARSON HILL ROCK PRODUCTS

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: Docket No. WEST 2014-389
: A.C. No. 04-04792-335756
:
:

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 August 7, 2015, the Commission received from Carson Hill Rock Products (“Carson Hill”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On June 20, 2014, the Chief Administrative Law Judge issued an Order to Show Cause in response to Clayton’s failure to answer the Secretary of Labor’s March 18, 2014 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on July 21, 2014, when it appeared that the operator had not filed an answer within 30 days.

Carson Hill claims that it sent a timely answer to the Petition for Assessment of Civil Penalty to the Secretary’s Denver Regional Office. The Secretary confirms this but states that there is no indication that the operator copied the Chief Administrative Law Judge on the correspondence. Furthermore, it appears that the operator promptly sought reopening after receiving a delinquency notice dated June 8, 2015. The Secretary does not oppose the request to reopen.

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 Carson Hill’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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