FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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January 9, 2024

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)	:	
	:	Docket No. LAKE 2022-0220
v.	:	A.C. No. 11-03235-556483
PEABODY GATEWAY NORTH MINING, LLC	:	

BEFORE: Jordan, Chair; Althen, Rajkovich, and Baker, 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 10, 2023, the Commission received from Peabody Gateway North Mining, LLC ("Peabody Gateway") a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On November 9, 2022, the Chief Administrative Law Judge issued an Order to Show Cause in response to Peabody Gateway's perceived failure to answer the Secretary of Labor's September 8, 2022 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on December 9, 2022, when it appeared that the operator had not filed an answer within 30 days.

Peabody Gateway asserts that its part-time contractual Safety Manager acted with excusable neglect in failing to submit a timely answer to the Petition here, primarily because he was distracted and preoccupied by the fact that his "elderly father was injured and hospitalized" during the relevant period. Peabody Decl. Ex. A. According to the operator, the part-time Safety Manager processes assessments along with the mine's site safety manager. The part-time Safety Manager received the Petition for Assessment of Civil Penalty but was on travel for an audit. Due to being distracted from his father's medical situation, upon returning the Safety Manager inadvertently misread the Petition as an Entry of Appearance from the Secretary's Trial Attorney who issued the Petition. Furthermore, when he received the Commission's Order to Show Cause and Order of Default, he asserts he inadvertently misread it because it contained the term "COVID-19" in the subject line. According to the Safety Manager, he "receive[s] many

emails with 'COVID-19' in the subject line which are informational and do not require a response and . . . [he thus] mistakenly believed this email to be irrelevant." *Id*. Peabody Gateway asserts that the Safety Manager's misreading of the Petition and Order to Show Cause was contributed to by his family's medical incident, which took some of his "attention away from work" and prolonged the time it took him to realize that he had missed these documents to file a timely Answer to the Petition. *Id*. The operator's counsel filed the motion to reopen after learning of these errors. The Secretary does not oppose the request to reopen, but notes that he may oppose future requests to reopen penalty assessments that are not answered in a timely manner.

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 Peabody Gateway's request and the Secretary's response, we find that the operator acted with excusable neglect, particularly in light of his family member's medical situation. The operator, however, should reassess its procedures to ensure that future answers are properly filed. 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, Chair

William I. Althen, Commissioner

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