

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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November 18, 2020

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. YORK 2019-0010
v.	:	A.C. No. 18-00019-476365 N492
	:	
NORTH AMERICAN MILLWRIGHT	:	
SERVICES, INC.	:	

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. (2018) (“Mine Act”). On May 7, 2019, the Commission received from North American Millwright Services, Inc. (“Millwright”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

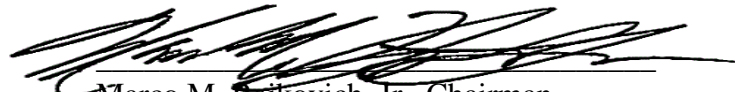
On February 15, 2019, the Chief Administrative Law Judge issued an Order to Show Cause in response to Millwright’s perceived failure to answer the Petition for Assessment of Civil Penalty, mailed by the Secretary of Labor on December 7, 2018. By its terms, the Order to Show Cause was deemed a Default Order on March 4, 2019, when it appeared that the operator had not filed an answer within 15 days.

The penalties became delinquent on April 4, 2019, but the operator paid the assessment in full on August 15, 2019. The Secretary does not oppose the request to reopen, but requests that Millwright, having contested the penalty at issue, take its further obligations seriously.

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).

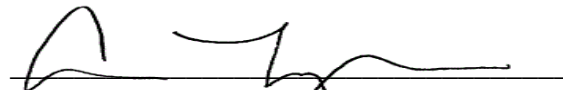
Having reviewed Millwright’s request and the Secretary’s response, we find that Millwright’s request to reopen, filed approximately 30 days after the penalties became delinquent, its payment of the penalty assessment, and the Secretary’s non-opposition, demonstrate the operator’s good faith, and merit reopening of the case. 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.



Marco M. Rajkovich, Jr., Chairman



William I. Althen, Commissioner



Arthur R. Traynor, III, Commissioner

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