

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N

WASHINGTON, D.C. 20004-1710

November 20, 2020

SECRETARY OF LABOR, :  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA) :  
 :  
v. : Docket No. SE 2020-0140  
 : A.C. No. 01-00011-502106  
IMERYS CARBONATES USA, 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. (2012) (“Mine Act”). On February 26, 2020, the Commission received from Imery’s Carbonates USA, Inc. (“Imery”) 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), 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).

During an inspection spanning nine weeks from June to August 2019, Imery received 130 citations from the Department of Labor’s Mine Safety and Health Administration (“MSHA”). The record indicates that the citations were divided between two proposed assessments. The first assessment was received by Imery on October 1, 2019, and the second was delivered on October 21, 2019. The assessment in question became a final order of the Commission on November 21, 2019. Imery claims that it timely submitted its contest of the citations in two packages, one sent on October 16, 2019, and the other on October 26, 2019. However, the operator asserts, and MSHA has confirmed, that the contests were inadvertently sent along with the payment of the uncontested citations to MSHA’s address in St. Louis, Missouri, rather than to Arlington, VA.

Imery claims that it learned of its mistake in early January 2020 when it discovered that MSHA had only processed 40 of the 72 contested citations as “under contest,” and that only its first contest package had been forwarded to the Office of Assessments from the St. Louis office.<sup>1</sup> MSHA sent a delinquency notice on January 6, 2020. Imery has not filed any other motions to reopen with the Commission in the last two years. The Secretary does not oppose the request to reopen, but urges the operator to take steps to ensure that future penalty contests are timely filed.


Having reviewed Imery’s request and the Secretary’s response, we find that the operator inadvertently mailed its contest form to MSHA’s St. Louis office along with its uncontested penalty payments. In the interest of justice, we hereby reopen this matter and remand it 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. Accordingly, consistent with Rule 28, the Secretary shall file a petition for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.



Marco M. Rajkovich, Jr., Chairman



William I. Althen, Commissioner



Arthur R. Traynor, III, Commissioner

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<sup>1</sup> The citations that were processed as contested by MSHA have been docketed at the Commission under Docket Nos. SE 2020-58 and SE 2020-59. On February 11, 2020, the assigned Administrative Law Judge granted Imery’s unopposed Motion to Stay those proceedings pending the outcome of this Motion to Reopen.

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