

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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January 12, 2021

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
: Docket No. CENT 2020-0007
v. : A.C. No. 13-00095-485512
: :
STEWART SERVICES :

BEFORE: Rajkovich, Chair; 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 October 4, 2019, the Commission received from Stewart Services (“Stewart”) a motion seeking to reopen a penalty assessment that had apparently become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

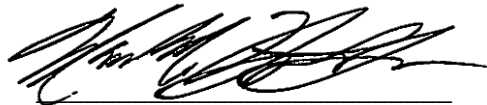
Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a).

The record reveals that on February 13, 2019, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued Citation No. 9383277 to Stewart for an alleged violation. On March 20, 2019, MSHA issued Assessment No. 000485512, proposing a civil penalty for the alleged violation. According to MSHA’s records, MSHA attempted to deliver the proposed assessment to Stewart on March 23, 2019, but the assessment was returned to MSHA on April 27, 2019, due to an inability to deliver it. On July 5, 2019, MSHA sent Stewart a delinquency notice regarding the unpaid civil penalty.

Stewart, through its representative, claims that it did not receive the proposed assessment, and that it intended to contest Citation No. 9393277 and the associated penalty. After receiving the delinquency notice, Stewart contacted MSHA and requested a copy of the proposed assessment, which it received on July 22, 2019. On July 24, 2019, Stewart sent a letter to MSHA contesting the subject citation and proposed penalty. When Stewart’s representative later

contacted MSHA to confirm receipt of the contest, he was informed that MSHA had received the contest but considered the proposed penalty assessment to have become a final Commission order.

Having reviewed Stewart's request and the Secretary's response, we conclude that Assessment No. 000485512 has not become a final Commission order. The proposed penalty assessment was not received by Stewart until July 22, 2019, and, following such receipt, Stewart timely contested Citation No. 9383277 and the associated proposed penalty. Accordingly, we deny the request to reopen as moot and remand this matter 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. 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., Chair



William I. Althen, Commissioner



Arthur R. Traynor, III, Commissioner

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