

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

NOV 30 2015

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

v.

THE DOE RUN COMPANY

: Docket No. CENT 2014-417-M
: A.C. No. 23-00409-344048
:
: Docket No. CENT 2014-418-M
: A.C. No. 23-00457-344049
:
: Docket No. CENT 2014-419-M
: A.C. No. 23-01800-344050
:
: Docket No. CENT 2014-420-M
: A.C. No. 23-00458-344053

BEFORE: Jordan, Chairman; Young, Nakamura, and Althen, Commissioners¹

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 June 6, 2014, the Commission received from The Doe Run Company (“Doe Run”) a motion seeking to reopen four penalty assessments that had become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).²

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).

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

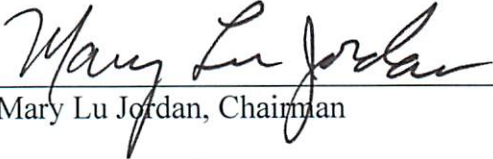
¹ Commissioner Cohen has elected not to participate in this matter.

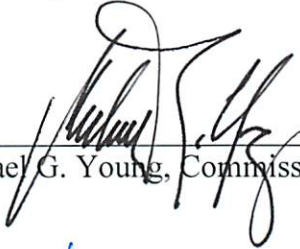
² Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers CENT 2014-417-M, CENT 2014-418-M, CENT 2014-419-M, and CENT 2014-420-M, which are all captioned The Doe Run Company, and involve similar procedural issues. 29 C.F.R. § 2700.12.


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).

Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that two of the proposed assessments were delivered on February 28, 2014, and the other two proposed assessments were delivered on March 3, 2014. The former two assessments became final orders of the Commission on March 31, 2014, and the latter two proposed assessments became final orders on April 2, 2014. Doe Run asserts that it contested these four proposed assessments on April 4, 2014, after the proposed assessments had already become final orders. The Secretary opposes the request to reopen, noting that the operator does not dispute that it failed to timely contest the proposed assessments. The Secretary also notes that the safety director who received the proposed assessments had been the safety director of the company for the past six months and should have been familiar with the penalty and contest procedures.

We note that the evidence indicates that the four proposed assessments at issue were contested on or around April 4, 2014, a few days after the proposed assessments became final orders. Given this close temporal proximity, 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 petitions for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.


Mary Lu Jordan, Chairman


Michael G. Young, Commissioner


Patrick K. Nakamura, Commissioner


William I. Althen, Commissioner

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