

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710

NOV 30 2016

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	
	:	Docket No. CENT 2014-599
v.	:	A.C. No. 13-00097-359206
	:	
LINWOOD MINING AND MINERALS	:	
CORPORATION	:	

BEFORE: Jordan, Chairman; Young, Cohen, and Althen, 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 October 1, 2015, the Commission received from Linwood Mining and Minerals Corporation (“Linwood”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On June 11, 2015, the Chief Administrative Law Judge issued an Order to Show Cause in response to Linwood’s perceived failure to answer the Secretary of Labor’s September 17, 2014 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on July 13, 2015, when it appeared that the operator had not filed an answer within 30 days.

Linwood asserts that the company’s safety director, tasked with contesting the proposed penalties, was extremely ill during 2015 and, as a result, was out of the office for extended periods of time. Despite assurances that the safety director had completed all of his assignments, Linwood claims that it discovered that this case was inadvertently ignored. Further, Linwood asserts that it will attempt to prevent future mistakes by instituting a review of all regulatory issues by the company’s general counsel. The Secretary does not oppose the request to reopen.

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

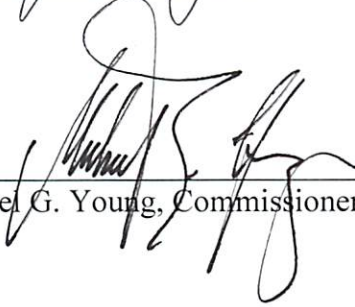
Commission. 30 U.S.C. § 823(d)(1). Consequently, the Judge's order here has become a final decision of the Commission.

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).

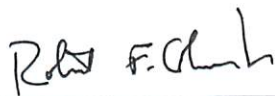
Having reviewed Linwood's request and the Secretary's response, in the interest of justice, we hereby reopen the proceeding and vacate the Default Order. Accordingly, this case is remanded to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.



Mary Lu Jordan, Chairman



Michael G. Young, Commissioner



Robert F. Cohen Jr., Commissioner



William I. Althen, Commissioner

Distribution:

**James A. Mezvinsky, Esq.
General Counsel
5401 Victoria Ave. Suite 100
Davenport, IA 52807-2991**

**Dallas Allen
Director of Safety and Training
401 East Front St.
Davenport, IA 52804**

**W. Christian Schumann, Esq.
Office of the Solicitor
U.S. Department of Labor
201 12th St. South, Suite 500
Arlington, VA 22202-5450**

**Chief Administrative Law Judge Robert J. Lesnick
Federal Mine Safety & Health Review Commission
1331 Pennsylvania Ave. N.W., Suite 520N
Washington, DC 20004-1710**

**Melanie Garris
Office of Civil Penalty Compliance
Mine Safety and Health Administration
U.S. Department of Labor
201 12th St. South, Suite 500
Arlington, VA 22202-5450**