

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N

WASHINGTON, D.C. 20004-1710

November 30, 2020

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
 :
v. : Docket No. CENT 2020-0017
 : A.C. No. 41-05205-499677
IMAGE MATERIALS :

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 March 17, 2020, the Commission received from Image Materials (“Image”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.


On January 31, 2020, the Chief Administrative Law Judge issued an Order to Show Cause in response to Image’s failure to answer the Secretary of Labor’s November 25, 2019 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on February 21, 2020, when it appeared that the operator had not filed an answer within 20 days.

Image asserts that it timely contested the Petition for Assessment of Civil Penalty and that its contest was lost after it was received. It states that on December 23, 2019, its contest was sent to the MSHA Dallas office, and again to the Arlington office on February 5, 2020. 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.

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).

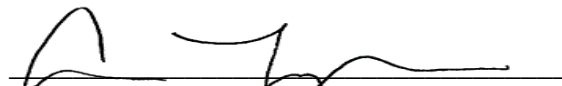
Having reviewed Image’s request and the Secretary’s response, in the interest of justice, we hereby remand this matter to the Chief Administrative Law Judge for a determination of whether good cause exists to excuse Image’s failure to respond to the show cause order, and for further proceedings as appropriate.



Marco M. Rajkovich, Jr., Chairman



William I. Althen, Commissioner



Arthur R. Traynor, III, Commissioner

Distribution:

Vaughn Proffitt, CEO
Image Materials
P.O. Box 1693
Roanoke, TX 76262
office@imagecompanies.net

Emily Toler Scott, Esq.
Office of the Solicitor
Division of Mine Safety and Health
201 12th Street South, Suite 401
Arlington, VA 22202-5450
Scott.Emily.T@dol.gov

Melanie Garris
USDOL/MSHA, OAASEI/CPCO
201 12th Street South, Suite 401
Arlington, VA 22202
Garris.Melanie@DOL.GOV

Chief Administrative Law Judge Glynn F. Voisin
Federal Mine Safety Health Review Commission
1331 Pennsylvania Avenue, NW Suite 520N
Washington, DC 20004-1710
GVoisin@fmshrc.gov