

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, D.C. 20004-1710

November 30, 2020

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. WEST 2019-0082
	:	A.C. No. 45-03175-476571
IRON MOUNTAIN QUARRY, LLC	:	
	:	

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 June 21, 2019, the Commission received from Iron Mountain Quarry, LLC (“Iron Mountain”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On February 19, 2019, the Chief Administrative Law Judge issued an Order to Show Cause in response to Iron Mountain’s failure to answer the Secretary of Labor’s December 21, 2018 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on March 7, 2019, when it appeared that the operator had not filed an answer within 15 days.

The operator states that when it filed its notice of contest it provided that its counsel, Erik Laiho, should be contacted for all matters related to the contest. Neither the operator nor its counsel have any record of receiving any documents from MSHA after filing its contest. It also notes that it had been having problems with postal deliveries for at least a year surrounding this matter. The Secretary did not provide tracking information or proof that the petition was delivered to the operator. The Secretary does not oppose the motion to reopen.


Iron Mountain asserts that it did not receive the Petition for Assessment of Civil Penalty. It states that after it did not receive any notice of further proceedings following its notice of contest, it reached out to the MSHA Assessment’s office and learned on May 23, 2019, that it was in default status. After an internal investigation, the operator could not find any record that the petition had been received. Additionally, Iron Mountain states that it has made multiple

complaints to the U.S. Postal Service because of inconsistent mail delivery over the course of a year. There is no proof that the Petition was delivered to the operator. 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 Iron Mountain's request and the Secretary's response, and the record in this case, we find that the Order to Show Cause did not result in a final order of default because it was never served on the operator. Accordingly, the operator's motion is denied as moot, and 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.



Marco M. Rajkovich, Jr., Chairman



William I. Althen, Commissioner



Arthur R. Traynor, III, Commissioner

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