

2018-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)	:	Docket No. YORK 2018-0084
	:	A.C. No. 30-00006-469606 E938
v.	:	
	:	Docket No. YORK 2019-0013
INDUSTRIAL PROCESS EQUIPMENT	:	A.C. No. 30-00006-477928 E938
CONSTRUCTORS	:	

BEFORE: Rajkovich, Chairman; Althen and Traynor, Commissioners

ORDER

BY THE COMMISSION:

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”).¹ On June 3 and 4, 2019, the Commission received from Industrial Process Equipment Constructors (“IPEC”) motions seeking to reopen the penalty assessment proceedings and relieve it from the Default Orders entered against it.

On February 15, 2019, the Chief Administrative Law Judge issued Orders to Show Cause in response to IPEC’s perceived failure to answer the Secretary of Labor’s September 6, 2018 and December 18, 2018 Petitions for Assessment of Civil Penalty. By their terms, the Orders to Show Cause were deemed Default Orders on March 4, 2019, when it appeared that the operator had not filed answers within 15 days.

IPEC asserts that the employee responsible for handling these matters mistakenly believed she had 30 days to respond to the Show Cause Orders when it filed its responses on March 13, 2019. During this timeframe, the employee was tending to several ill family members, including her mother who unfortunately passed away on February 7, 2019. The operator had also lost its secretary who would normally work with the employee on these matters, and who would have alerted her to the deadline. The Secretary does not oppose the requests to reopen, but urges the operator to take steps to ensure that future penalty contests are timely filed.

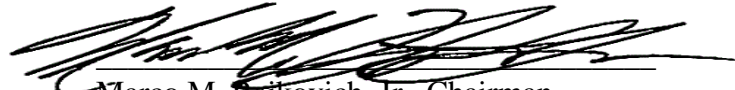
¹ IPEC filed similar motions to reopen relying upon the same reason as a basis for reopening in two separate dockets. For the limited purpose of addressing the motions to reopen, we hereby consolidate docket numbers YORK 2018-0084 and YORK 2019-0013, which involve similar procedural issues. *See* 29 C.F.R. §2700.12.

The Judge's jurisdiction in these matters 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 orders here have become final decisions 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 IPEC's requests and the Secretary's responses, under these circumstances, we find that IPEC's failure to respond to the Judge's show cause orders due to family illness and the corresponding death of her mother amount to inadvertence or excusable neglect. *See Guilmette Brothers Corp.*, 22 FMSHRC 803, 804 (July 2000) (granting request to reopen where operator's wife was undergoing cancer surgery); *Northern Kansas Rock, Inc.*, 22 FMSHRC 486, 487-88 (Apr. 2000) (granting request to reopen where the operator failed to timely file because husband was undergoing medical treatment and surgery); *Tigue Construction Co.*, 21 FMSHRC 9, 10-11 (Jan. 1999) (granting operator's request where its vice president, who was the employee responsible for answering charges, unexpectedly underwent quadruple bypass surgery); *KenAmerican Resources, Inc.*, 20 FMSHRC 199, 200-01 (Mar. 1998) (reopening proceedings where operator's safety director, who routinely handles MSHA violations, was home recovering from surgery).

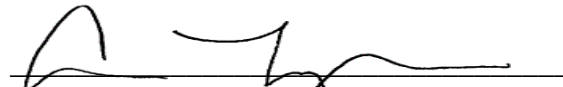
In the interest of justice, we hereby reopen these proceedings and vacate the Default Orders. Accordingly, these cases are remanded to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.



Marco M. Rajkovich, Jr., Chairman



William I. Althen, Commissioner



Arthur R. Traynor, III, Commissioner

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