

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

**December 4, 2023**

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEST 2023-0117
v.	:	A.C. No. 04-01891-568592
	:	
ENTACT	:	

BEFORE: Jordan, Chair; Althen, Rajkovich, and Baker, 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. (2018) (“Mine Act”). On February 6, 2023, the Commission received from Entact a motion seeking to reopen a penalty assessment that had appeared to become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

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).

Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessment was returned undelivered on December 24, 2022, and became a final order of the Commission on January 23, 2023. Entact asserts that it did not receive the proposed assessment. Specifically, it claims that it could not find any copy of the assessment in any of its emails or hard copy files and that it checked with all their offices throughout the country, and nobody had received it. According to MSHA records, the assessment was sent to Entact’s health and safety director in Latrobe, Pennsylvania. However, the current address of record and location of Entact’s safety director is in Westmont, Illinois.

On January 31, 2023, the operator contacted MSHA to find out where the assessment was, and was informed that it had been sent, although the delivery confirmation from USPS appears to show that the mail was returned because the occupant had “moved, left no address.” MSHA provided the operator with a copy of the proposed assessment on February 1, 2023, and the operator filed the contest with MSHA the same day. It received a letter via email informing

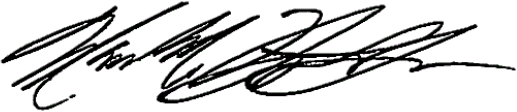
it that the contest was sent too late. The Secretary does not oppose the request to reopen, but urges the operator to take steps to ensure that future penalty contests are timely filed.

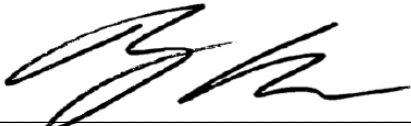
Having reviewed Entact's request and the Secretary's response, we conclude that the proposed penalty assessment did not become a final order of the Commission because Entact did not receive the proposed assessment. *See* 29 C.F.R. § 2700.26 (“[a] person has 30 days after receipt of the proposed penalty assessment within which to notify the Secretary that he contests the proposed penalty assessment.”)

Accordingly, Entact's motion to reopen is 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.

  
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Mary Lu Jordan, Chair

  
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William I. Althen, Commissioner

  
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Marco M. Rajkovich, Jr., Commissioner

  
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Timothy J. Baker, Commissioner

Distribution:

Kim Redding  
Consultant  
N - Compliance Safety Services, Inc.  
2949 S. Giovanni Ave.  
Meridian, ID 83642  
redding1562@msn.com

April Nelson, Esq.  
Associate Solicitor  
Office of the Solicitor  
U.S. Department of Labor  
Division of Mine Safety and Health  
201 12th Street South, Suite 401  
Arlington, VA 22202  
Nelson.April@dol.gov

Emily Toler Scott, Esq.  
Counsel for Appellate Litigation  
Office of the Solicitor  
U.S. Department of Labor  
Division of Mine Safety and Health  
201 12th Street South, Suite 401  
Arlington, VA 22202  
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  
Office of the Chief Administrative Law Judge  
1331 Pennsylvania Avenue, NW Suite 520N  
Washington, DC 20004-1710  
GVoisin@fmshrc.gov