

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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DEC 07 2016

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
	:	Docket Nos. PENN 2015-77
	:	PENN 2015-78
	:	
v.	:	A.C. Nos. 36-02945-360227
	:	36-02945-365829
	:	
SHAMOKIN FILLER COMPANY, INC.	:	
	:	

BEFORE: Jordan, Chairman; Young, Cohen, and Althen, 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”). On December 23, 2014, the Commission received from Shamokin Filler Company, Inc. (“Shamokin”) two motions seeking to reopen penalty assessments that had become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).¹

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).

We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“*JWR*”). In evaluating requests to reopen final orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of

¹ In light of the similar legal and procedural postures of these proceedings, we hereby order that these matters be consolidated for review. See 29 C.F.R. § 2700.12 (“The Commission and its Judges may at any time, upon their own motion or a party’s motion, order the consolidation of proceedings that involve similar issues.”).

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”); *JWR*, 15 FMSHRC at 787. 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 permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Regarding Docket No. PENN 2015-77, records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) demonstrate that the proposed assessment was delivered on September 6, 2014, and became a final order of the Commission on October 6, 2014. Shamokin had previously filed notices of contest to the two underlying citations. The Secretary claims that it mailed a delinquency notice to the operator on November 21, 2014, but did not attach a copy of the notice to its response to Shamokin’s motion.

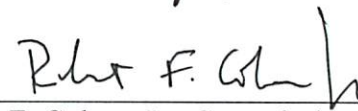
Regarding Docket No. PENN 2015-78, MSHA records show that the proposed assessment was delivered on November 3, 2014 and became a final order of the Commission on December 3, 2014.

Shamokin asserts that its failures to timely contest the proposed assessments arose from a change in the company’s contest procedures. As a result, the company inadvertently failed to fax the proposed assessments to its counsel as per its usual procedure. The operator’s counsel asserts that she discovered this error during her due diligence review of MSHA’s database, and that Shamokin filed the motion to reopen “within just days” of this discovery. Shamokin asserts that it has since modified its office procedures for receiving and maintaining all MSHA-related paperwork, and has instituted back-up procedures. The Secretary does not oppose the requests to reopen. However, the Secretary urges Shamokin to ensure that future penalty assessments are contested in a timely manner.

Having reviewed Shamokin's requests and the Secretary's responses, in the interest of justice, we hereby reopen these matters and remand them 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. Accordingly, consistent with Rule 28, the Secretary shall file petitions for assessment of penalty within 45 days of the date of this order. See 29 C.F.R. § 2700.28.


Mary Lu Jordan, Chairman


Michael G. Young, Commissioner


Robert F. Cohen, Jr., Commissioner


William I. Althen, Commissioner

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