

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N  
WASHINGTON, DC 20004-1710

**DEC 07 2016**

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
	:	Docket Nos. WEST 2015-738
	:	WEST 2015-739
v.	:	
	:	A.C. Nos. 05-03836-377564
	:	05-03836-379850
	:	
PEABODY TWENTYMILE MINING,	:	
LLC	:	

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 June 30, 2015, the Commission received from Peabody Twentymile Mining, LLC (“Peabody”) 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).<sup>1</sup>

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

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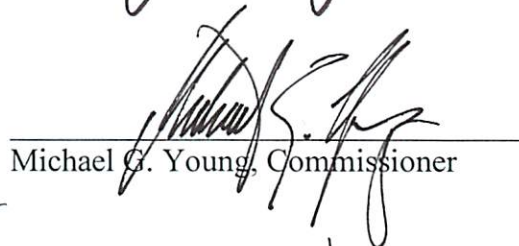
<sup>1</sup> In light of the similar legal and procedural postures of these proceedings, we hereby order that these matters be consolidated for review. See 29 C.F.R. § 2700.12 (“The Commission and its Judges may at any time, upon their own motion or a party’s motion, order the consolidation of proceedings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

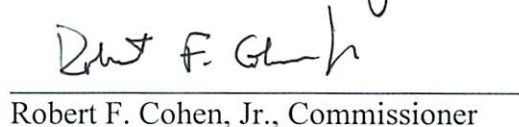
reopen final orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure, under which the Commission may relieve a party from a final order of the Commission on the basis of mistake, inadvertence, excusable neglect, or other reason justifying relief. *See* 29 C.F.R. § 2700.1(b) (“the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure”); *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).

In WEST 2015-738, records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) demonstrate that the proposed assessment was delivered on April 6, 2015, and became a final order of the Commission on May 6, 2015. In WEST 2015-739, MSHA records demonstrate that the proposed assessment was delivered on May 4, 2015 and became a final order of the Commission on June 3, 2015. In both cases, the operator asserts that it inadvertently mailed the contest forms within 30 days of receipt to MSHA’s payment office in St. Louis, MO. The Secretary does not oppose the requests to reopen. However, he notes that the address for the St. Louis payment office is the incorrect address for submitting contest forms. The Secretary urges Peabody to ensure that contests to future penalty assessments are mailed to the appropriate address in a timely manner.

Having reviewed Peabody’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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