

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
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WASHINGTON, DC 20004-1710

December 13, 2023

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. CENT 2022-0189
	:	A.C. No. 23-00188-556052
v.	:	
	:	
BUZZI UNICEM USA	:	

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 June 24, 2023, the Commission received from Buzzi Unicem USA (“Buzzi”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On October 17, 2022, the Chief Administrative Law Judge issued an Order to Show Cause in response to Buzzi’s perceived failure to answer the Secretary of Labor’s August 16, 2022, Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on November 17, 2022, when it appeared that the operator had not filed an answer within 30 days.

Buzzi requests relief in order to state its reasons for why it disagrees with alleged violations alleged in the Secretary’s petition. The Secretary opposes the request to reopen noting that the operator has failed to provide any explanation for its failure to file an answer to the Petition for Assessment of Penalty, respond to the Order to Show Cause and Order of Default, and for why it delayed responding to a delinquency letter issued by the Department of Labor’s Mine Safety and Health Administration (“MSHA”) on February 1, 2023.


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).

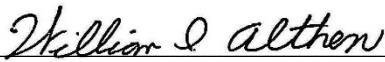
Having reviewed Buzzi’s request and the Secretary’s response, we conclude that the operator has failed to provide sufficient information to determine whether good cause may exist to reopen the final order. We have held that a grant of relief under Rule 60(b) requires more than “general assertions or conclusory statements as to why an operator failed to timely contest.” *Atlanta Sand & Supply Co.*, 30 FMSHRC 605, 608 (July 2008). However, Buzzi’s motion to reopen provides no explanation for its failure to timely file a petition or respond to the Chief Judge’s Order to Show Cause and Order of Default.

In considering whether an operator has unreasonably delayed in filing a motion to reopen, we also find relevant the amount of time that has passed between an operator’s receipt of a delinquency notice and the operator’s filing of its motion to reopen. *See, e.g., Left Fork Mining Co.*, 31 FMSHRC 8, 11 (Jan. 2009); *Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009) (holding that motions to reopen filed more than 30 days after receipt of notice of delinquency must explain the reasons why the operator waited to file a reopening request, and lack of explanation is grounds for the Commission to deny the motion). Here, the operator attempted to reopen the case approximately four months after MSHA sent it a delinquency letter. No explanation is provided for this lengthy delay.

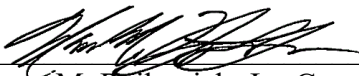
Accordingly, we deny Buzzi's request to reopen with prejudice. *See Southwest Rock Prod., Inc.*, 45 FMSHRC ____, No. WEST 2021-0275 (Aug. 30, 2023) (denying motion to reopen where operator provided insufficient information to determine whether good cause existed to reopen and operator failed to explain lengthy delay in filing motion).



Mary Lu Jordan, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner



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