

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVE., N.W., SUITE 520N

WASHINGTON, DC 20004-1710

**DEC 18 2015**

SECRETARY OF LABOR  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),

v.

U.S. SILVER – IDAHO, INC.

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: Docket No. WEST 2015-717-M  
: A.C. No. 10-00082-376098  
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BEFORE: Jordan, Chairman; Young, Cohen, Nakamura, and Althen, 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. (2012) (“Mine Act”). On June 16, 2015, the Commission received from U.S. Silver – Idaho, Inc. (“U.S. Silver”) a motion seeking to reopen seven proposed assessments that had become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

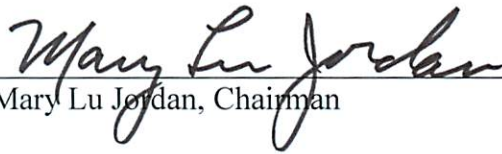
Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a).

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 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).

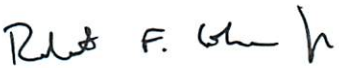
Records of the Department of Labor's Mine Safety and Health Administration ("MSHA") indicate that the proposed assessment was delivered on March 16, 2015, and became a final order of the Commission on April 15, 2015. U.S. Silver asserts that it intended to contest the assessments for Citation Nos. 8790253, 8790352, 8790355, 8790354, 8784867, 8870013, and 8790381 but failed to do so due to a clerical error. The motion was accompanied by a Declaration from U.S. Silver's Environmental, Health & Safety Superintendent, who acknowledged his failure to submit the notice of contest and stated that he had put a system in place to make sure that the error would not occur again. U.S. Silver further avers that it promptly moved to reopen this case upon receipt of the Secretary's June 1, 2015 delinquency notification. 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.


With regard to Citation No. 8784867, the Commission has subsequently learned that after the original proposed assessment had become a final order of the Commission, U.S. Silver received a modified version of the citation, along with a reduced proposed penalty, which the operator paid. (Letter from W. Christian Schumann, Counsel, Appellate Litigation, Office of the Solicitor, U.S. Dept. of Labor to Lisa M. Boyd, Executive Director, Federal Mine Safety and Health Review Commission (July 15, 2015) (also served on operator's counsel)). This action would appear to reflect the parties' desire to reach a limited settlement of this particular penalty. Pursuant to the Mine Act and our procedural rules, however, settlements are subject to Commission review. See 30 U.S.C. § 820(k); 39 C.F.R. § 2700.31.

Having reviewed U.S. Silver's request and the Secretary's response, in the interest of justice, we hereby reopen Citation Nos. 8790253, 8790352, 8790355, 8790354, 8784867 (as originally issued), 8870013, and 8790381 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 a petition for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28. The parties may submit a motion regarding the appropriate disposition of Citation No. 8784867 to the assigned Judge for review.

  
Mary Lu Jordan, Chairman

  
Michael G. Young, Commissioner

  
Robert F. Cohen Jr., Commissioner

  
Patrick K. Nakamura, Commissioner

  
William I. Althen, Commissioner

Distribution:

Donna Vetrano Pryor, Esq.  
Jackson Lewis, PC  
950 17th Street, Suite 2600  
Denver, CO 80202

Terry J. Jacobs  
U.S. Gold & Silver, Inc.  
P.O. Box 440  
Wallace, ID 83873-0440

W. Christian Schumann, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
201 12th St. South, Suite 500  
Arlington, VA 22202-5450

Chief Administrative Law Judge Robert J. Lesnick  
Federal Mine Safety & Health Review Commission  
1331 Pennsylvania Ave. N.W., Suite 520N  
Washington, DC 20004-1710

Melanie Garris  
Office of Civil Penalty Compliance  
Mine Safety and Health Administration  
U.S. Department of Labor  
201 12th St. South, Suite 500  
Arlington, VA 22202-5450