

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

January 22, 2021

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) : SE 2021-0024-M
 : A.C. No. 01-02901-520230
v. :
 :
PEABODY SOUTHEAST MINING, LLC :

BEFORE: Traynor, Chair; Althen and Rajkovich, Commissioners

ORDER

BY THE COMMISSION:

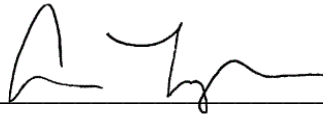
This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”). On November 12, 2020, the Commission received from Peabody Southeast Mining, LLC (“Peabody”) a motion seeking to reopen a penalty assessment that appeared to have become a final order 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).

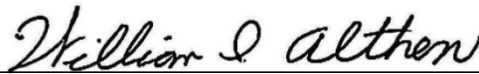
We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“*JWR*”). In evaluating requests to reopen final orders, the Commission 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 August 24, 2020. On September 14, the penalty for the citation at issue in this motion was inadvertently paid along with 26 other assessments. The proposed assessment would have become a final order on September 23. Peabody's motion, and a supporting affidavit, say that it inadvertently paid the penalty upon the recommendation of a company official to pay all 27 assessments. The operator did not note that the proposed assessment included a citation it wished to conference in connection with an ongoing dispute about a section 104(b) order for failure to abate the violation cited by the assessment at issue here. It requests that the Commission reopen both the mistakenly-paid citation and the associated section 104(b) order. The Secretary does not oppose the requests to reopen, but urges the operator to take steps to ensure that future penalty contests are timely filed.

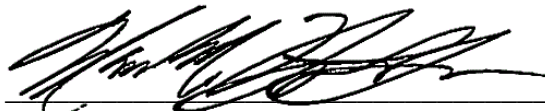
Having reviewed Peabody's request and the Secretary's response, we find that the operator has sufficiently explained its failure to timely contest the citations at issue as the result of mistake, inadvertence, and excusable neglect. In the interest of justice, we hereby reopen this matter and remand it 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.



Arthur R. Traynor, III, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner

Distribution (by e-mail):

Arthur M. Wolfson, Esq.
Fisher & Phillips, LLP
Counsel for Peabody Southeast Mining, LLC
6 PPG Place, Suite 830
Pittsburgh, PA 15222
AWolfson@fisherphillips.com

John M. McCracken, Esq.
Office of the Solicitor
U.S. Department of Labor
Mine Safety and Health Division
201 12th Street South, Suite 401
Arlington, VA 22202-5452
McCracken.John.M@dol.gov

Chief Administrative Law Judge Glenn Voisin
Federal Mine Safety & Health Review Commission
1331 Pennsylvania Avenue, NW, Suite 520N
Washington, DC 20004-1710
GVoisin@fmshrc.gov

Melanie Garris
U.S. Department of Labor
Office of Civil Penalty Compliance
Mine Safety and Health Administration
201 12th Street South, Suite 401
Arlington, VA 22202-5452
Garris.Melanie@dol.gov