

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N

WASHINGTON, D.C. 20004-1710

DEC 23 2014

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

v.

C. S. & S. COAL CORPORATION

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Docket No. VA 2010-51  
A.C. No. 44-07025-179671

BEFORE: Nakamura, Acting Chairman; Cohen 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 September 10, 2013, the Commission received from C. S. & S. Coal Corporation (“C. S. & S.”) a motion by counsel seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On March 16, 2011, the Chief Administrative Law Judge issued an Order to Show Cause in response to C. S. & S.’s failure to answer the Secretary of Labor’s September 1, 2010 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause became a Default Order on April 18, 2011, when the operator did not file an answer within 30 days.

C. S. & S. asserts that both the Petition for Assessment of Civil Penalty and the Order to Show Cause were issued and delivered to an incorrect address. The Secretary of Labor does not oppose the request. We note that the proposed assessment forms for this case were also mailed to the same incorrect address, and that the Commission issued an order allowing the case to be reopened on July 14, 2010. We also note the operator’s argument that, since this case was reopened, it has been diligent in monitoring the case for receipt of the Petition. The operator asserts that it contacted the Commission’s docket office to determine the status of the case on August 22, 2013, which is when it first learned that the Petition and Order to Show Cause were filed again to the same incorrect address. The motion to reopen at issue was received by the docket office 19 days later.

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.

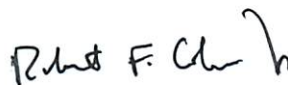
In evaluating requests to reopen final orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure under which the Commission may relieve a party from a final order of the Commission on the basis of mistake, inadvertence, excusable neglect, or other reason justifying 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 the facts and circumstances of this case, the operator's request, and the Secretary's response, 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.



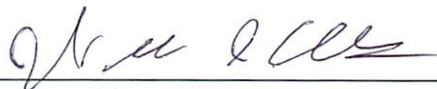
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Patrick K. Nakamura, Acting Chairman



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Robert F. Cohen, Jr., Commissioner



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William I. Althen, Commissioner

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