FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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January 25, 2021

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)	:	
	:	Docket No. WEST 2021-0015
v.	:	A.C. No. 24-00839-504839
DECKER COAL CO.	:	

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 October 22, 2020, the Commission received from Decker Coal Co. ("Decker Coal") a motion seeking to reopen a penalty assessment that had 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 December 10, 2019, and became a final order of the Commission on January 13, 2020. In its motion to reopen, Decker

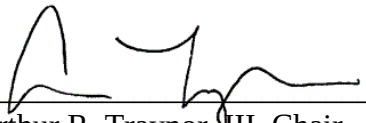
Coal states that it would "love to give a list of viable excuses" for not timely contesting the proposed assessment here, but states instead that the matter simply "fell through the cracks" and that the operator "forgot" about it. The Secretary does not oppose the request to reopen, but notes that a delinquency notice was mailed to the operator on February 24, 2020. Decker Coal provides no excuse for not filing its motion to reopen until nearly eight months after the delinquency notice was mailed. Instead, the operator suggests that due to the involvement of a third party, it is "between a roc and a hard place." .

Due to the extraordinary nature of reopening a penalty that has become final, the operator has the burden of showing that it should be granted such relief through a detailed explanation of its failure to timely contest the penalty and any delays in filing for reopening. The Commission considers the entire range of factors relevant to determining mistake, inadvertence, excusable neglect, or other good faith reason for reopening.

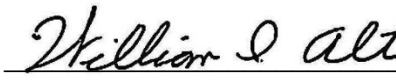
"We have repeatedly and unequivocally held that a failure to contest a proposed assessment as a result of an inadequate or unreliable internal processing system does not establish grounds for reopening an assessment." *Lone Mountain Processing, Inc.*, 35 FMSHRC 3346 (Nov. 2013, *citing Oak Grove Res., LLC*, 33 FMSHRC 103, 104 (Feb. 2011). "Further, we have emphasized the importance of the operator's explanation of the time it took to file for reopening after receipt of a notice of delinquency." *Id., citing Highland Mining Co.*, 31 FMSRC 1313, 1315-16 (Nov. 2009).

This requirement is grounded in the requirement in Rule 60(c) of the Federal Rules of Civil Procedure, which provides that a Rule 60(b) motion shall be made "within a reasonable time." In the present case, the operator offers literally no excuse for its failure, which suggests that its internal procedures are inadequate to ensure that contests are timely filed, or to determine what has gone wrong when they are not. The operator also did not act to cure its delinquency for nearly eight months after the Secretary claims, in an assertion that Decker Coal has not rebutted, that it sent a delinquency notice to the operator. That failure, too, is unexplained. We cannot find that the motion was made within a "reasonable time" without an explanation for the extraordinary delay, and cannot find good cause when none is offered as an excuse.

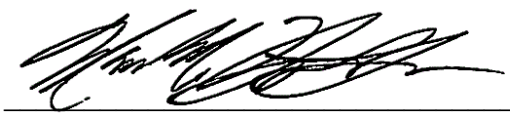
Accordingly, we deny Decker Coal's motion.



Arthur R. Traynor, III, Chair



William I. Althen, Commissioner



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