

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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January 25, 2024

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

v.

COAL-MAC LLC

:
: Docket No. WEVA 2023-0154
: A.C. No. 46-08249-569568
:
: Docket No. WEVA 2023-0155
: A.C. No. 46-08984-569574
:
: Docket No. WEVA 2023-0156
: A.C. No. 46-09075-569575
:
: Docket No. WEVA 2023-0192
: A.C. No. 46-08918-571114
:
: Docket No. WEVA 2023-0196
: A.C. No. 46-08249-571110

BEFORE: Jordan, Chair; Althen, Rajkovich, and Baker, Commissioners

ORDER

BY THE COMMISSION:

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On August 24, 2023, the Commission received from Coal-Mac, LLC (“Coal-Mac”) a motion seeking to reopen five penalty assessment proceedings and relieve it from the Default Orders entered against it.¹

In each of the captioned proceedings, the Chief Administrative Law Judge issued an Order to Show Cause in response to Coal-Mac’s perceived failure to answer the Secretary of Labor’s Petition for Assessment of Civil Penalty. The Secretary filed the relevant petitions on March 16 (Docket Nos. WEVA 2023-0154, WEVA 2023-0155, WEVA 2023-0156), March 30 (WEVA 2023-0192) and April 4, 2023 (WEVA 2023-0196). The Chief Judge issued Orders to Show Cause on May 16, May 30 and June 5, 2023, respectively, which were deemed Default Orders on June 16, June 30 and July 6, 2023, when it appeared that the operator had not filed an answer within 30 days.

¹ For the limited purpose of addressing these motions to reopen, we hereby grant the Secretary’s motion to consolidate the captioned docket numbers involving similar procedural issues. 29 C.F.R. §2700.12.

Coal-Mac asserts, without further detail, that the captioned proceedings are in default because its Safety Manager was unfamiliar with the contest process and made mistakes. The Secretary opposes the request to reopen. The Secretary argues that the claim of “error” is insufficiently detailed to justify reopening, and that the Safety Manager’s lack of familiarity with the contest process indicates inadequate internal procedures. The Secretary also claims the proceedings are moot because the relevant penalties have all since been paid. Finally, the Secretary argues that the operator failed to identify facts that, if proven on reopening, would constitute a meritorious defense.

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).

However, we emphasize that the party seeking to reopen a final penalty bears the burden of showing that it is entitled to such relief, through a detailed explanation of its failure to timely respond. *Revelation Energy, LLC*, 40 FMSHRC 375, 375-76 (Mar. 2018). General assertions or conclusory statements are insufficient. *Southwest Rock Prod., Inc.*, 45 FMSHRC ___, No. WEST 2021-0275 (Aug. 30, 2023). At a minimum, the applicant must provide all known details, including relevant dates and persons involved, and a clear explanation that accounts, to the best of the operator’s knowledge, for the failure to submit a timely response. *Higgins Stone Co.*, 32 FMSHRC 33, 34 (Jan. 2010). Here, Coal-Mac provides only a cursory explanation for its failure to respond to the Secretary’s Petition and Chief Judge’s Order, simply stating that the safety manager was unfamiliar with the contest process and that the proceedings defaulted due to his “error.” We find that Coal-Mac has failed to meet its burden of showing that it is entitled to relief.

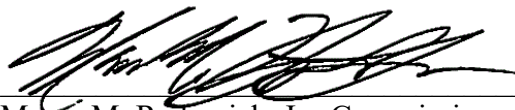
We have also held that operators are responsible for properly training all personnel who handle proposed assessments, and that failure to properly train such employees indicates an inadequate or unreliable internal processing system. *Cumberland Contura, LLC*, 40 FMSHRC 1129, 1130 (Aug. 2018); *Rogers Group, Inc.*, 39 FMSHRC 1551, 1554 (Aug. 2017); *Kentucky Fuel Corp.*, 38 FMSHRC 632, 634 (Apr. 2016). The Commission has made it clear that, where

an operator fails to properly contest an assessment due to an inadequate or unreliable system, the operator has not established grounds for reopening. *Oak Grove Res., LLC*, 33 FMSHRC 103, 104 (Feb. 2011); *Double Bonus Coal Co.*, 32 FMSHRC 1155, 1156 (Sept. 2010); *Highland Mining Co.*, 31 FMSHRC 1313, 1315 (Nov. 2009). Here, Coal-Mac asserts that its safety manager erred because he was new to contesting assessments and lacked the proper knowledge.² This strongly suggests that the safety manager did not receive adequate training prior to being placed in charge of this task.

Having reviewed Coal-Mac’s request and the Secretary’s response, we conclude that the operator failed to establish good cause for reopening the captioned proceedings. Coal-Mac’s motion to reopen provides no explanation for its failure to timely answer the Petition or respond to the Show Cause Order beyond a general statement of “error.” We also find indications of an inadequate internal processing system. Accordingly, Coal-Mac’s request to reopen is denied with prejudice.


Mary Lu Jordan, Chair


William I. Althen, Commissioner


Marco M. Rajkovich, Jr., Commissioner


Timothy J. Baker, Commissioner

² The Secretary questions the validity of Coal-Mac’s claim of inexperience, noting the operator’s size and its history of successfully navigating the contest process. While we do not question the *Safety Manager’s* statement that he lacked knowledge regarding the contest process, we note that the operator (as a whole) clearly has experience with the process and reiterate that operators bear the responsibility of training their personnel.

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