

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

JAN 29 2016

v.

LEE MECHANICAL CONTRACTORS,  
INC.

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: Docket No. SE 2015-43-M  
: A.C. No. 08-01287-359405  
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BEFORE: Jordan, Chairman; Cohen, and Nakamura, Commissioners<sup>1</sup>

**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 3, 2014, the Commission received from Lee Mechanical Contractors, Inc. (“Lee”) 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

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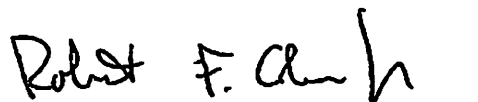
<sup>1</sup> This case has been delegated to a panel of three Commissioners pursuant to section 113(c) of the Mine Act for the limited purpose of assessing the merits of the motion to reopen. 30 U.S.C. § 823(c).

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 25, 2014, and became a final order of the Commission on September 24, 2014. Lee asserts that the company's Safety Coordinator usually files MSHA paperwork himself, but due to a heavy workload, he delegated the mailing of the contest form for this case to an employee in accounts payable. Lee claims that the accounts payable employee resigned unexpectedly, and Lee then discovered that this employee had not completed or mailed large amounts of paperwork, including the contest form for this case. Since the contest form was discovered, the company has made changes to its filing procedures. 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.

Having reviewed Lee'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.<sup>2</sup> 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.

  
Mary Lu Jordan, Chairman

  
Robert F. Cohen Jr., Commissioner

  
Patrick K. Nakamura, Commissioner

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<sup>2</sup> Chairman Jordan concurs in the decision to reopen the case, but would dismiss the case as moot rather than remanding it to the Chief Administrative Law Judge because MSHA's Mine Data Retrieval System indicates that the penalty for this case has been paid in full.

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