

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

JAN 31 2017

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

v.

SOUTH CENTRAL COAL
INDIANA, LLC

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: Docket No. LAKE 2015-23
: A.C. No. 12-02431-360684
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BEFORE: Althen, Acting Chairman; Jordan, Young, and Cohen, 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 July 21, 2015, the Commission received from South Central Coal Indiana, LLC (“South Central”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On May 4, 2015, the Chief Administrative Law Judge issued an Order to Show Cause in response to South Central’s failure to timely answer the Secretary of Labor’s November 13, 2014 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on June 4, 2015, when it appeared that the operator had not filed an answer within 30 days.

South Central asserts that it had retained an outside attorney to address MSHA matters at its mine. The operator states that it failed to timely respond to the Order to Show Cause because it was in the process of moving offices, which caused the operator to miss some deadlines. South Central further states that it does not expect to miss deadlines in the future since it does not expect to move its office again, and that it has also asked one of its employees to take specific responsibility to ensure timely responses to MSHA filings and Commission orders in the future. The Secretary does not oppose the request to reopen.


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 South Central's request and the Secretary's response, in the interest of justice, we hereby reopen the proceeding and vacate the Default Order. In particular, we note that the Secretary's Petition for Assessment of Civil Penalty was not sent to the attorney designated by South Central, and that the Order to Show Cause likewise was not sent to the attorney. When South Central discovered the default, it quickly requested reopening.

Accordingly, this case is remanded 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.



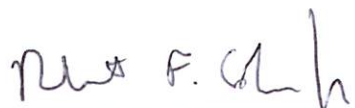
William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

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