



Medina asserts that it did not receive much of the paperwork associated with both cases because it was sent to the addresses of a terminated employee and of Martin Marietta Materials Southwest, Inc. (“Martin”), the company that Medina sold the portable rock crushing plant to in 2011. Regarding Docket No. CENT 2010-1205-M, the record indicates that Show Cause Orders were issued on February 9, 2012 and March 9, 2012, to the terminated employee and Martin, respectively. The first Show Cause Order was returned as undeliverable, but the second order was delivered to Martin on March 15, 2012.

Medina further asserts that it paid \$3,300 in response to a properly addressed delinquency notice, dated July 23, 2012. Despite the payment, Medina notes that it received a collection notice, dated September 19, 2012, and promptly notified MSHA. Medina states in its response to the Secretary’s opposition that, in its communications with MSHA, it was told that the payment of \$3,300 for Docket No. CENT 2010-1205-M would terminate all its debts. Therefore, Medina believed that it had satisfied all its responsibilities and was not notified otherwise.

The Secretary confirms that MSHA received a payment of \$3,300 by check, dated August 17, 2012, which was later applied to CENT 2010-1205-M after Medina contacted MSHA. The Secretary considers Docket No. CENT 2010-1205-M to be paid in full and thus ineligible for reopening.

Although payment of contested citations may be a grounds for finding a motion to reopen moot, we have made limited exceptions where there exists clear evidence that an operator made the payment by mistake or inadvertence. *See, e.g., McCoy Elkhorn Coal Corp.*, 33 FMSHRC 1, 2 (Jan. 2011). Based on the record, it is uncontradicted that Medina was under the mistaken belief that a payment of \$3,300 would satisfy all penalties relating to A.C. No. 000228066. Medina was never served with any document stating that the contested citations had been split into two dockets, and the delinquency and collection notices that prompted the payment only refer to the A.C. Number, not the docket with which the penalty is associated.

Regarding Docket No. CENT 2010-1206-M, in a letter dated January 30, 2012, Medina asserted that it did not receive any paperwork after contesting the proposed assessment. The Show Cause Order and the Default Decision were delivered to the new owner of the portable plant on November 26, 2012 and January 23, 2013, respectively. A copy of the Show Cause Order was also sent to the address of the terminated employee but was returned undelivered.

The Secretary opposes the request to reopen, asserting that the operator identifies no exceptional circumstances warranting reopening. The Secretary claims that, following Medina’s sale of the plant, there was inadequate monitoring of MSHA citations, outstanding penalties, and active Commission cases. The Secretary does not explain why service was not attempted on the

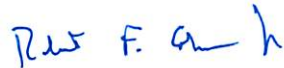
correct address, which was a part of the record and was known to both MSHA's Office of Assessments and a MSHA Conference Litigation Representative in Dallas, Texas.<sup>2</sup>

Medina responded to the Secretary's opposition, explaining that it did not part with Martin on good terms and never received the Show Cause Orders or Default Decisions. Moreover, Medina asserts that after it sold the portable rock crushing plant and notified MSHA of the sale, it was unreasonable to expect that the plant's former supervisor, whose employment had been terminated, would forward mail to Medina.

Pursuant to Commission Procedural Rule 66, an order to show cause shall be mailed to the party by registered or certified mail, return receipt requested, before the entry of any order of default or dismissal. 29 C.F.R. § 2700.66. Having reviewed Medina's request and the Secretary's response, we conclude that the operator did not receive the Show Cause Orders, and therefore the Default Orders have not been effectively entered. Accordingly, Docket Nos. CENT 2010-1205-M and CENT 2010-1206-M are remanded to the Chief Administrative Law Judge and Administrative Law Judge, respectively, for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.



Patrick K. Nakamura, Acting Chairman



Robert F. Cohen, Jr., Commissioner



William I. Althen, Commissioner

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<sup>2</sup> We note that the proposed penalties, motions requesting extension to file the petition for assessment of civil penalty, delinquency notices, and collection notice were sent to Medina's correct address. It is unclear why there was an abrupt change in service upon the filing of the Secretary's petition whereby documents were served to different addresses.

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