

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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WASHINGTON, D.C. 20004-1710

FEB 10 2015

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

v.

PETE LIEN & SONS, INC.

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Docket No. CENT 2013-472-M  
A.C. No. 39-00020-318697

BEFORE: Nakamura, Acting Chairman; Cohen and Althen, 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 February 3, 2014, the Commission received from Pete Lien & Sons, Inc., (“Pete Lien”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On August 8, 2013, the Chief Administrative Law Judge issued an Order to Show Cause in response to Pete Lien’s failure to answer the Secretary of Labor’s June 24, 2013 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause became a Default Order on September 9, 2013, when the operator did not file an answer within 30 days.

Pete Lien asserts that on August 29, 2013, it submitted an answer to the Secretary’s Petition for Assessment of Civil Penalty, but that, due to a typographical error, the operator had incorrectly listed the docket number and case number in its answer, which is why the Commission never received it. The Secretary does not oppose the request, but notes that the safety coordinator at Pete Lien is a former MSHA inspector who is aware of MSHA’s contest procedures. The Secretary cautions that he may oppose future motions to reopen penalty assessments where proper procedures are not followed.

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).

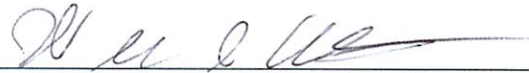
Having reviewed Pete Lien's request and the Secretary's response, in the interest of justice, we hereby reopen the proceeding and vacate the Default Order. Accordingly, this case is remanded to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.



Patrick K. Nakamura, Acting Chairman



Robert F. Cohen, Jr., Commissioner



William I. Althen, Commissioner

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