

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.

KINGSTOWN CORPORATION

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Docket No. YORK 2013-170-M
A.C. No. 19-01082-324542

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 20, 2014, the Commission received from the Secretary a motion seeking to reopen a penalty assessment proceeding to relieve Kingstown Corporation (“Kingstown”) from the Default Order entered against it.

On September 16, 2013, the Chief Administrative Law Judge issued an Order to Show Cause in response to Kingstown’s failure to answer the Secretary of Labor’s July 25, 2013 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause became a Default Order on October 17, 2013, when the operator did not file an answer within 30 days.

The Secretary asserts that Kingstown was engaged in ongoing negotiations with the Secretary for a global settlement for a number of consolidated cases. Because Judge Andrews, the presiding Judge, was aware of the negotiations, Kingstown apparently believed that it was not required to file an answer to the Judge’s Order to Show Cause and that this constitutes excusable neglect. The Secretary adds that the parties eventually entered into a settlement of all pending matters, except for the case in question. The Secretary requests that the Commission reopen this case and re-assign it to Judge Andrews so that he can assess the adequacy of the proposed settlement in this matter.

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 Chief Administrative Law Judge's Order to Show Cause 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 the Secretary's request, 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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