

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N
WASHINGTON, D.C. 20004-1710

February 10, 2023

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| SECRETARY OF LABOR, | : | |
| MINE SAFETY AND HEALTH | : | Docket No. PENN 2022-0029 |
| ADMINISTRATION (MSHA) | : | A.C. No. 36-05018-546442 |
| | : | |
| v. | : | Docket No. PENN 2022-0045 |
| | : | A.C. No. 36-05018-544866 |
| IRON CUMBERLAND, LLC | : | |

BEFORE: Jordan, Chair; Althen, Rajkovich, and Baker, Commissioners

ORDER

BY THE COMMISSION:

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”).¹ On February 23 and February 25, 2022, the Commission received from Iron Cumberland, LLC (“Iron Cumberland”) motions seeking to reopen penalty assessments that had become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

Under section 105(a), 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

¹ For the limited purpose of addressing these motions to reopen, we hereby consolidate docket numbers PENN 2022-0029 and PENN 2022-0045, involving similar procedural issues. 29 C.F.R. § 2700.12.

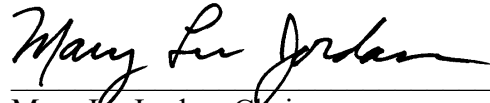
good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

The Department of Labor's Mine Safety and Health Administration ("MSHA") indicates that the proposed assessments were delivered to the operator on November 12, 2021, and December 9, 2021. The assessments became final orders of the Commission on December 13, 2021, and January 10, 2022.

Iron Cumberland maintains that at the end of the 2021 year, the mine underwent new ownership, as well as a change to new management. The change in management included the hiring of a new Director of Safety in late December. This transition in leadership led to procedural and processing changes that resulted in the inadvertent mistake of failing to timely contest the proposed assessments.

Iron Cumberland first learned of the assessments when it received the delinquency notices in January and February 2022. The Secretary does not oppose the requests to reopen but urges the operator to take steps to ensure that future penalty contests are timely filed in accordance with MSHA's regulations at 30 C.F.R. § 100.7 and the Commission's procedural rules.

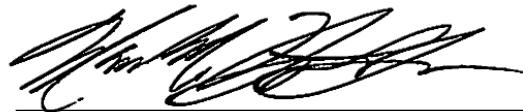
Having reviewed Iron Cumberland's requests and the Secretary's responses, we find that due to inadvertent administrative errors resulting from changes in management at the mine, the operator failed to timely contest the penalty assessments. In the interest of justice, we hereby reopen this matter and 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. Accordingly, consistent with Rule 28, the Secretary shall file petitions for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.



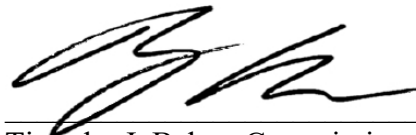
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William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner



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