

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710

FEB 19 2016

JONES BROS MFG, INC.

v.

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

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: Docket No. CENT 2015-386-RM
: Order No. 8860641; 02/10/2015
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BEFORE: Jordan, Chairman; Young and Cohen, Commissioners¹

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 May 4, 2015, the Commission received from Jones Bros. MFG, Inc., (“Jones”) a motion seeking to reopen an imminent danger withdrawal order that had been issued pursuant to section 107(a) of the Mine Act, 30 U.S.C. § 817(a).

Under section 107(e)(1) of the Mine Act, an operator who wishes to contest an imminent danger order under section 107(a) may request review by the Commission no later than 30 days after being notified of such order. Commission Procedural Rule 9 allows the Commission to extend the filing time for a document for good cause shown. 29 C.F.R. § 2700.9(a). The rule allows the Commission to grant motions for extensions of time after the designated filing time has expired if the party requesting the extension can show, in writing, the reasons for its failure to make the request before the filing deadline. 29 C.F.R. § 2700.9(b).

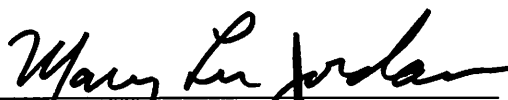
The section 107(a) order that Jones seeks to contest was issued on February 10, 2015. Hence, the deadline for contesting it under section 107(e)(1) was March 12, 2015. Also on February 10, Citation No. 8860642 was issued for the same condition, pursuant to section 104(a) of the Mine Act, 30 U.S.C. § 814(a). Jones asserts that it received the proposed assessment for the section 104(a) citation around April 22, 2015, and contested the citation on April 29, 2015. Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the section 104(a) citation was timely contested and has been docketed as Docket No. CENT 2015-0382, A.C. No. 41-02925-377834. Jones asserts that it intended to contest the section 107(a) order as well, but had no experience in contesting citations prior to this inspection and was not aware of the 30-day filing deadline for section 107(a) orders. The operator avers

¹ This case has been delegated to a panel of three Commissioners pursuant to section 113(c) of the Mine Act for the limited purpose of assessing the merits of the motion to reopen. 30 U.S.C. § 823(c).

that it has been informed of the proper filing deadlines by its counsel and now understands the procedures that must be followed. The Secretary does not oppose the request to reopen.

Relying on Rule 60(b) of the Federal Rules of Civil Procedure, we have 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, appropriate proceedings on the merits may be permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995). We find that the same considerations apply to the order here under Commission Procedural Rule 9. Having reviewed Jones' request and the Secretary's response, in the interest of justice and judicial economy, we therefore construe Jones' motion to reopen as a motion for an extension of time under Commission Rule 9, find that Jones has shown good cause for us to extend the time to contest the order at issue, and extend the deadline to file an application for review of the imminent danger withdrawal order.

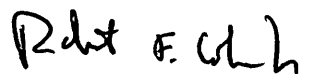
Jones is instructed to file an application for review within 30 days of the date of this order, to be followed by further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.



Mary Lu Jordan, Chairman



Michael G. Young, Commissioner



Robert F. Cohen Jr., Commissioner

Distribution:

Nicholas Scala, Esq., CMSP
Law Office of Adele L. Abrams, P.C.
4740 Corridor Place
Suite D
Beltsville, MD 20705

W. Christian Schumann, Esq.
Office of the Solicitor
U.S. Department of Labor
201 12th St. South, Suite 500
Arlington, VA 22202-5450

Chief Administrative Law Judge Robert J. Lesnick
Federal Mine Safety & Health Review Commission
1331 Pennsylvania Ave. N.W., Suite 520N
Washington, DC 20004-1710

Melanie Garris
Office of Civil Penalty Compliance
Mine Safety and Health Administration
U.S. Department of Labor
201 12th St. South, Suite 500
Arlington, VA 22202-5450