

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

February 21, 2024

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

v.

LEESVILLE LAND LLC

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: Docket No. LAKE 2024-0051
: A.C. No. 33-00968-560122
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: Docket No. LAKE 2024-0052
: A.C. No. 33-00968-570892
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: Docket No. LAKE 2024-0053
: A.C. No. 33-00968-570975
:
: Docket No. LAKE 2024-0054
: A.C. No. 33-00968-571806
:
: Docket No. LAKE 2024-0055
: A.C. No. 33-00968-572422
:
: Docket No. LAKE 2024-0056
: A.C. No. 33-00968-574067
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: Docket No. LAKE 2024-0057
: A.C. No. 33-00968-576146
:
: Docket No. LAKE 2024-0058
: A.C. No. 33-00968-580230
:
: Docket No. LAKE 2024-0059
: A.C. No. 33-00968-582187
:
: Docket No. LAKE 2024-0060
: A.C. No. 33-00968-585210

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”). On November 22, 2023, the Commission received from Leesville Land LLC (“Leesville”) a motion seeking to reopen ten 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).¹

Under section 105(a) of the Mine Act, 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 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).

Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessment in Docket No. LAKE 2024-0051 was delivered to the operator on August 16, 2022, and became a final order of the Commission on September 15, 2022. The proposed assessment in Docket No. LAKE 2024-0052 was delivered to the operator on February 7, 2023, and became a final order of the Commission on March 9, 2023. The proposed assessment in Docket No. LAKE 2024-0053 was delivered to the operator on February 15, 2023, and became a final order of the Commission on March 17, 2023. The proposed assessment in Docket No. LAKE 2024-0054 was delivered to the operator on February 28, 2023, and became a final order of the Commission on March 30, 2023. The proposed assessment in Docket No. LAKE 2024-0055 was delivered to the operator on March 15, 2023, and became a final order of the Commission on April 14, 2023. The proposed assessment in Docket No. LAKE 2024-0056 was delivered to the operator on April 10, 2023, and became a final order of the Commission on May 10, 2023. The proposed assessment in Docket No. LAKE

¹ For the limited purpose of addressing these motions to reopen, we hereby consolidate these matters because they involve similar factual and procedural issues. 29 C.F.R. § 2700.12.

2024-0057 was delivered to the operator on May 18, 2023, and became a final order of the Commission on June 19, 2023. The proposed assessment in Docket No. LAKE 2024-0058 was delivered to the operator on July 11, 2023, and became a final order of the Commission on August 10, 2023. The proposed assessment in Docket No. LAKE 2024-0059 was delivered to the operator on August 18, 2023, and became a final order of the Commission on September 18, 2023. The Secretary's records do not specify the final order date for Docket No. LAKE 2024-0060. However, the statement date for the proposed assessment in this case was September 13, 2023.

Leesville asserts that its former Safety Director had limited experience with contesting citations, failed to understand the assessment process, and did not timely contest assessments. Mine management received a notice from MSHA that the mine's enforcement history "was trending in the wrong direction and could lead to a Pattern of Violations consideration." Operator's Affidavit at 3. On November 1, 2023, Leesville hired a new experienced safety director to handle proposed assessments and mine safety and health-related duties. Upon assuming the position, the new safety director discovered numerous failures by his predecessor and promptly took steps to file motions to reopen and implement new procedures for ensuring proposed assessments are timely evaluated and contested. The operator claims to be resolving outstanding delinquencies and working with MSHA to improve mine safety and health conditions. They claim the new Safety Director has made significant improvements and seeks reopening to contest a discrete number of citations. In view of Leesville's changes and willingness to work with MSHA, the Secretary does not oppose the motion to reopen.

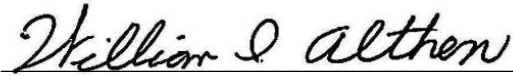
In Docket No. LAKE 2024-0051, the motion to reopen was filed more than one year after becoming a final order. Under Federal Rule of Procedure 60(c), motions to reopen alleging mistake, inadvertence or excusable neglect must be made no more than a year after entry of the final order. *J S Sand & Gravel, Inc.*, 26 FMSHRC 795, 796 (Oct. 2004). Therefore, Leesville's motion as to this case is untimely and is denied with prejudice.

In the remaining cases, having reviewed Leesville's request and the Secretary's response, we find that the failure to contest was the result of a single employee failing to understand the contest procedures. Leesville's prompt action upon discovering the issue and willingness to hire additional support to work with MSHA constitute a basis for reopening. *Vulcan Electrical Servs.*, 45 FMSHRC 597, 98 (July 11, 2023) (reopening when an employee did not understand the significance of the timing for filing a contest and the operator took prompt action to correct the issue).

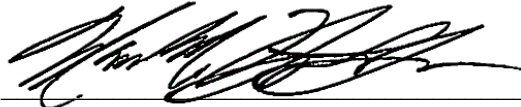
In the interest of justice, we hereby reopen these matters and remand it to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700. Accordingly, consistent with Rule 28, the Secretary shall file a petition for assessment of penalty within 45 days of the date of this order. See 29 C.F.R. § 2700.28.




Mary Lu Jordan, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner



Timothy J. Baker, Commissioner

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