

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

MAR 05 2018

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

v.

SAN BENITO SUPPLY

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Docket No. WEST 2017-388-M
A.C. No. 04-05653-419793

BEFORE: Althen, Acting Chairman; Jordan, Young, and Cohen, 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 May 2, 2017, the Commission received from San Benito Supply (“San Benito”) a motion seeking to reopen a penalty assessment that appeared to have become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

On September 19, 2016, San Benito received a proposed penalty assessment from the Secretary. On October 19, 2016, the proposed assessment was deemed a final order of the Commission, when it appeared that the operator had not filed a Notice of Contest within 30 days.¹

San Benito asserts that it timely contested the proposed assessment on October 19, 2016. The operator provided certified mail receipt from the United States Postal Service showing that a parcel was sent on that date. According to a letter dated January 17, 2017, the Secretary the initially believed the contest was untimely because it was not received by MSHA until October 25, 2016. However, on May 19, 2017, the Secretary filed a response to the request to reopen in which he stated that he does not oppose the request to reopen and now concedes that the matter was timely contested. The Secretary suggests that the reopening request be dismissed as moot.

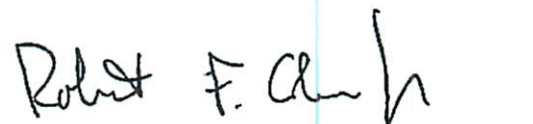
¹ Section 105(a) states that if an operator “fails to notify the Secretary that he intends to contest the . . . proposed assessment of penalty . . . the citation and the proposed assessment of penalty shall be deemed a final order of the Commission.” 30 U.S.C. § 815(a).

We agree with the Secretary. San Benito's contest of the proposed assessment was timely filed. Accordingly, the operator's motion to reopen is moot, and 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.


William I. Althen, Acting Chairman


Mary Lu Jordan, Commissioner


Michael G. Young, Commissioner


Robert F. Cohen, Jr., Commissioner

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