

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

MAR 06 2017

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

v.

THE SILVER QUEEN MINE LLC

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: Docket No. WEST 2016-56-M
: A.C. No. 02-03312-357676
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:

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 October 19, 2015, the Commission received from The Silver Queen Mine LLC (“Silver Queen”) a motion seeking to reopen a penalty assessment that had become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

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).

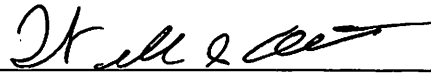
We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“*JWR*”). In evaluating requests to reopen final orders, the Commission 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.

Further, Rule 60(c) of the Federal Rules of Civil Procedure provides that a Rule 60(b) motion shall be made within a reasonable time, and for reasons of mistake, inadvertence, or excusable neglect, not more than one year after the judgment, order, or proceeding was entered or taken. Fed. R. Civ. P. 60(c).

The Secretary opposes the request to reopen, and argues that the motion to reopen was filed out of time, over a year after the assessment became a final order. Records of the

Department of Labor's Mine Safety and Health Administration ("MSHA") indicate that the proposed assessment was delivered on August 9, 2014, and became a final order of the Commission on September 8, 2014.

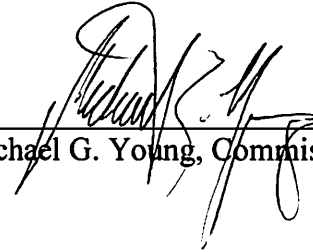
In its motion to reopen, Silver Queen asserts that it has very little experience with MSHA, and that it is financially prohibitive to hire a lawyer or safety consultant. Silver Queen claims that the delay was due to its lack of understanding of the contest procedure, and also because the operator did not understand that subsequent violations of the same standard would result in substantially increased penalties. Essentially, Silver Queen claims that its failure to contest the proposed assessment was excusable neglect. However, the operator's motion to reopen was filed more than one year after becoming a final order. Therefore, under Rule 60(c), Silver Queen's motion is untimely. *JS Sand & Gravel, Inc.*, 26 FMSHRC 795, 796 (Oct. 2004). Accordingly, we deny Silver Queen's motion.



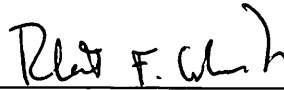
William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

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