

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

MAR 06 2017

ESSROC CEMENT CORP.

v.

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

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Docket No. WEVA 2014-818-RM
Order No. 8716832; 02/12/2014

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 April 17, 2014, the Commission received from Essroc Cement Corp., (“Essroc”) a motion seeking to reopen or accept a late-filed contest for 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 12, 2014. Hence, the deadline for contesting it under section 107(e)(1) was March 14, 2014. Essroc asserts that it intended to contest the order, but mistakenly believed that it would be able to do so when it received a proposed assessment from MSHA. Essroc states that its Safety Manager did not understand that this order would not be assessed a penalty, and would have to be contested within 30 days of issuance, until Essroc’s legal counsel advised him of this fact. The Secretary has submitted a letter stating that it will not file an answer in this case until the Commission rules on Essroc’s motion, but does not oppose the operator’s request.

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.

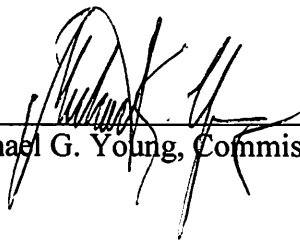
Having reviewed Essroc's request and the Secretary's response, in the interest of justice and judicial economy, we find that Essroc has shown good cause for us to extend the time to contest the order at issue. We further accept Essroc's late-filed application for review of the imminent danger withdrawal order and remand the case for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.



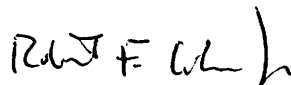
William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

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