FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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MAR 14 2018

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)	:	
	:	Docket No. CENT 2016-406-M
v.	:	A.C. No. 41-01001-410598
TEXAS ARCHITECTURAL AGGREGATE, INC.	:	

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 17, 2016, the Commission received from Texas Architectural Aggregate, Inc. ("TAA") a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On August 15, 2016, the Chief Administrative Law Judge issued an Order to Show Cause in response to TAA's perceived failure to answer the Secretary of Labor's June 21, 2016 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on September 15, 2016, when it appeared that the operator had not filed an answer within 31 days.

TAA asserts that multiple citations issued during a single inspection were separated into two separate dockets. The operator believed that it had properly contested the instant matter when it filed its contest regarding the other docket. TAA claims that it never received the Show Cause Order and only learned about the default via an e-mail from Secretary's counsel dated September 30, 2016. TAA has not filed any other motions to reopen with the Commission in the last two years and responded quickly upon discovering its mistake. The Secretary does not oppose the request to reopen.

The Judge's jurisdiction in this matter terminated when the default occurred. 29 C.F.R. § 2700.69(b). Under the Mine Act and the Commission's procedural rules, relief from a judge's decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2)(A)(i); 29 C.F.R. § 2700.70(a). If the Commission does not direct review within 40 days of a decision's issuance, it becomes a final decision of the

Commission. 30 U.S.C. § 823(d)(1). Consequently, the Judge's order here has become a final decision of the Commission.

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"); *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993). 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 will be permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Having reviewed TAA's request and the Secretary's response, we find that the operator mistakenly believed that it had filed a contest in this matter and allowed the assessment to become final. TAA took prompt action after discovering its error. In the interest of justice, we hereby reopen the proceeding and vacate the Default Order. Accordingly, 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

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