FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

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SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA),	:	Docket No. KENT 2016-310
v.	:	A.C. No. 15-19437-405257
REVELATION ENERGY, LLC	:	

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 September 20, 2016, the Commission received from Revelation Energy, LLC ("Revelation") a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it. The Secretary did not oppose the request.

On June 9, 2016, the Chief Administrative Law Judge issued an Order to Show Cause in response to Revelation's perceived failure to answer the Secretary of Labor's April 26, 2016 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on July 11, 2016, when it appeared that the operator had not filed an answer within 31 days.

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).

The party seeking to reopen a final penalty bears the burden of showing that it is entitled to such relief, through a detailed explanation of its failure to timely contest the penalty or answer the Secretary's petition, and any delays in filing for reopening. *See Dynamic Energy, Inc.*, 39

FMSHRC ___, 2017 WL 3581088 (Aug. 3, 2017); *Higgins Stone Co.*, 32 FMSHRC 33, 34 (Jan. 2010); *Lone Mountain Processing, Inc.*, 35 FMSHRC 3342, 3345 (Nov. 2013).

We find that Revelation has failed to meet this burden here. In this case, the Secretary issued an assessment on April 26, 2016. Revelation never responded to that petition. The only explanation that the operator provided for this failure was that "Docket # KENT 2016-0310 was overlooked by our office and the Answer and Notice were never sent. This was an oversight on our part . . ." This – without any effort to explain the operator's serial failures or to address their root causes – is at best an admission that Revelation's failure to timely file its response to the petition was the result of an inadequate internal processing system, which is not a basis for reopening an assessment. *See Shelter Creek Capital, LLC*, 34 FMSHRC 3053, 3054 (Dec. 2012); *Oak Grove Res.*, LLC, 33 FMSHRC 103, 104 (Feb. 2011); *Double Bonus Coal Co.*, 32 FMSHRC 1155, 1156 (Sept. 2010); *Highland Mining Co.*, 31 FMSHRC 1313, 1315 (Nov. 2009); *Pinnacle Mining Co.*, 30 FMSHRC 1066, 1067 (Dec. 2008); *Pinnacle Mining Co.*, 30 FMSHRC 1061, 1062 (Dec. 2008).

We note that the operator has filed three other requests to reopen in the last two years. In all of those instances, the operator's excuse for its failure to respond to the petitions was that there were problems with or oversights made by office staff. That empty excuse cannot be used repeatedly without elaboration or any effort to address what appears to be a pattern of neglect and disregard for Commission Orders. Ultimately, the operator must be accountable for the actions taken, or not taken, by its office employees.

Because of Revelation's failure to respond to the petition, the Chief Administrative Law Judge issued a Show Cause Order on June 9, 2016, ordering the operator to explain its lack of response within 31 days or face default. The operator did not respond in time. In fact, the operator did not respond to the Show Cause Order until September 20, 2016, 103 days after it was issued and more than 10 weeks after the operator's failure to respond to the Order had resulted in its default. Beyond the inadequate explanation for the delay in responding to the petition, Revelation provided no explanation whatsoever for why it was over two months late in responding to the Show Cause Order.

As a result, we find that Revelation failed to meet its burden of establishing good cause for failing to file a timely contest of the penalty petition or to comply with the deadline contained in the Order to Show Cause. Accordingly, we find that the operator has failed to demonstrate an entitlement to extraordinary relief, and thus we deny Revelation's motion.

William I. Althen, Acting Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

Distribution:

Joseph G. Jacobs
Consultant
Revelation Energy, LLC
P.O. Box 249
Stanville, KY 41659

Ali Beydoun, Esq.
Office of the Solicitor
U.S. Department of Labor
201 12th St. South, Suite 401
Arlington, VA 22202-5450

Chief Administrative Law Judge Robert J. Lesnick
Federal Mine Safety & Health Review Commission
1331 Pennsylvania Ave. N.W., Suite 520N
Washington, DC 20004-1710

Melanie Garris
Office of Civil Penalty Compliance
Mine Safety and Health Administration
U.S. Department of Labor
201 12th St. South, Suite 500
Arlington, VA 22202-5450