

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

MAR 14 2018

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
v. : Docket No. KENT 2016-311
REVELATION ENERGY, LLC : A.C. No. 15-19737-405260

BEFORE: Althen, Acting Chairman; Jordan, Young, and Cohen, Commissioners

ORDER

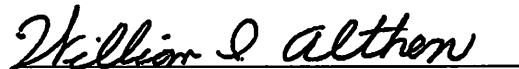
BY THE COMMISSION:

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.

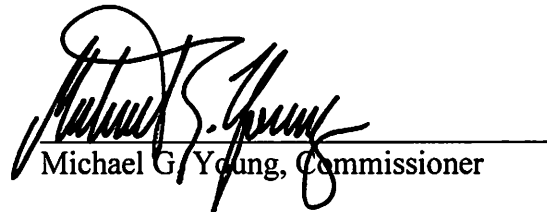
On July 5, 2016, the Chief Administrative Law Judge issued an Order to Show Cause in response to Revelation’s perceived failure to answer the Secretary of Labor’s May 18, 2016 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on August 5, 2016, when it appeared that the operator had not filed an answer within 31 days.

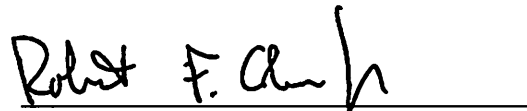
Revelation asserts that it mailed its Answer and Notice of Contest on June 16, 2016, but due to a clerical error included the docket number “KENT 2016-0331” instead of “KENT 2016-0311.” The Secretary does not oppose the request to reopen.

Having reviewed Revelation's request and the Secretary's response, we conclude that the operator was not in default under the terms of the Order to Show Cause because it filed a timely response to the penalty petition. *See Eagle Creek Mining, LLC*, 35 FMSHRC 781, 782 (Apr. 2013). This renders the Order to Show Cause and Default Order a nullity. 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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