

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVE., N.W., SUITE 520N

WASHINGTON, DC 20004-1710

**MAR 14 2018**

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

v.

PEABODY TWENTYMILE MINING,  
LLC

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Docket No. WEST 2016-696  
A.C. No. 05-03836-413724

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

**ORDER**

BY THE COMMISSION:

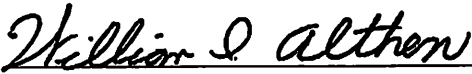
This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”). On September 7, 2016, the Commission received from Peabody Twentymile Mining, LLC (“Twentymile”) a motion seeking to reopen a penalty assessment that had become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).


Under section 105(a), 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. 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 permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

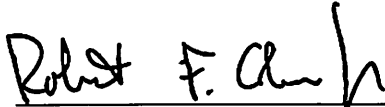
Records of the Department of Labor's Mine Safety and Health Administration ("MSHA") indicate that the proposed assessment became a final order of the Commission on September 2, 2016. Twentymile asserts that the employee responsible for processing assessments sent payments for the citations the operator did not intend to contest, but inadvertently failed to forward the contests of the other penalties to the MSHA office in Arlington, VA. The employee had previously filed contests in the proper manner and is no longer employed by Twentymile. On September 6, 2016, the operator learned from MSHA's Mine Data Retrieval Site that the citations had not been properly contested and filed the request to reopen the next day. The Secretary does not oppose the request to reopen.

Having reviewed Twentymile's request and the Secretary's response, we find that the operator mistakenly failed to file the contest with the appropriate MSHA Office. However, the operator recognized its mistake just a few days after the citations became final and quickly filed the instant request to reopen. In the interest of justice, we hereby reopen this matter and remand it 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. Accordingly, consistent with Rule 28, the Secretary shall file a petition for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.

  
William I. Althen, Acting Chairman

  
Mary Lu Jordan, Commissioner

  
Michael G. Young, Commissioner

  
Robert F. Cohen, Jr., Commissioner

Distribution:

Christopher G. Peterson  
Jackson Kelly, PLLC  
1099 18<sup>th</sup> Street, Suite 2150  
Denver, CO 80202

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