

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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March 24, 2021

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. CENT 2020-0130
ADMINISTRATION (MSHA)	:	A.C. No. 16-00509-506934
	:	
v.	:	Docket No. CENT 2020-0131
	:	A.C. No. 16-00509-503010
CARGILL DEICING TECHNOLOGY	:	

BEFORE: Traynor, Chair; Althen and Rajkovich, Commissioners

ORDER

BY THE COMMISSION:

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On April 24, 2020, the Commission received from Cargill Deicing Technology a motion seeking to reopen two penalty assessments that had become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).¹

Under section 105(a) of the Mine Act, 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

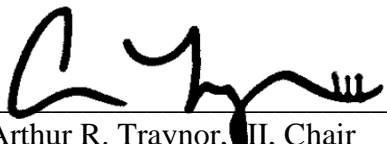
¹ For the limited purpose of addressing the motions to reopen, we hereby consolidate these captioned dockets. 29 C.F.R. § 2700.12.

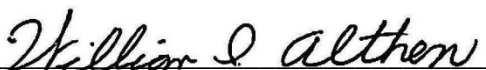
good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).


Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that a proposed assessment was delivered on November 4, 2019, and became a final order on December 4, 2019 (CENT 2020-0131). A second proposed assessment was delivered on January 10, 2020 and became a final order of the Commission on February 9, 2020 (CENT 2020-0130). Cargill asserts that it inadvertently mailed the notice of contest forms along with payment for the remainder of the citations at issue to MSHA’s address in St. Louis, Missouri.

The Secretary does not oppose the request to reopen, but urges the operator to take steps to ensure that future penalty contests are timely filed with MSHA’s Civil Penalty Compliance Office in Arlington, Virginia.

Having reviewed Cargill’s request and the Secretary’s response, we find that Cargill’s failure to timely contest was the result of an inadvertent mistake. In the interest of justice, we hereby reopen these matters and remand the cases 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.


Arthur R. Traynor, III, Chair


William I. Althen, Commissioner


Matco M. Rakovich, Jr., Commissioner

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