

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

MAR 28 2017

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

v.

MUNSEN PAVING, LLC

:
:
: Docket No. WEST 2016-215-M
: A.C. No. 35-003312-398548
:
:

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 Munsen Paving, LLC (“Munsen”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On March 8, 2016, the Chief Administrative Law Judge issued an Order to Show Cause in response to Munsen’s failure to answer the Secretary of Labor’s January 14, 2016 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on April 8, 2016, when it appeared that the operator had not filed an answer within 30 days.

Munsen asserts that, on April 7, 2016, it timely filed an answer to the Order to Show Cause via certified mail. It offers a return receipt to prove that the answer was post-marked on April 7, 2016. Munsen further demonstrates that it received the return receipt with April 13, 2016 stamped on the front of the card. The Secretary does not oppose the request to reopen.

Having reviewed Munsen'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 as it timely complied with the Order. *See Vulcan Construction Materials*, 33 FMSHRC 2164 (Sept. 2011). This renders the 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.



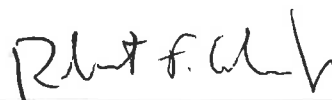
William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

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