

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

WASHINGTON, DC 20004-1710

MAR 31 2017

SECRETARY OF LABOR,	:	Docket No. WEST 2016-336
MINE SAFETY AND HEALTH	:	A.C. No. 48-01780-397886
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEST 2016-335
v.	:	A.C. No. 48-01780-397886
	:	
GOOD BENTONITE COMPANY, 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 March 22, 2016, the Commission received from Good Bentonite Company, LLC (“Good Bentonite”) a motion seeking to reopen a penalty assessment¹ 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) 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 Two dockets were created for assessment number 000397886—Docket Nos. WEST 2016-336 and WEST 2016-335. Because these cases both deal with the same assessment, they should be considered duplicate dockets and resolved in tandem. Accordingly, we hereby consolidate docket numbers WEST 2016-336 and WEST 2016-335. 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 the proposed assessment was delivered on December 7, 2015. MSHA received partial contest paperwork, which was missing the sheet that identifies which violations the operator seeks to contest, on December 28, 2015. MSHA called Good Bentonite regarding the incomplete contest form on the same day, but did not receive a call back. The proposed assessment became a final order of the Commission on January 6, 2015, and a delinquency notice was mailed to the operator on February 22, 2016.

Good Bentonite asserts that it misread the Notice of Contest Rights that was included with the proposed assessment, and therefore did not file all of the necessary paperwork to contest the assessment. Good Bentonite states that the owner of the company was out of the office when MSHA called and did not get a message about the phone call from MSHA stating that the contest was not filled out correctly. 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.

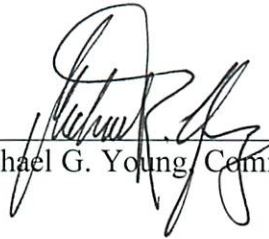
Having reviewed Good Bentonite's request and the Secretary's response, we find that the failure to file a complete contest was an inadvertent mistake. In the interest of justice, we hereby reopen these matters and remand them to the Chief Administrative Law Judge for further proceedings pursuant to the 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.



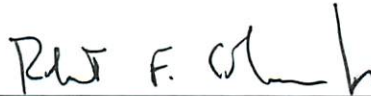
William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

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