

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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**APR 07 2016**

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA) : Docket No. CENT 2015-522-M  
: A.C. No. 23-00188-379541 HUW  
:  
v. : Docket No. CENT 2015-618-M  
: A.C. No. 23-00188-382032 HUW  
LEE MECHANICAL CONTRACTORS :

BEFORE: Jordan, Chairman; Nakamura, and Althen, Commissioners<sup>1</sup>

**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 July 28, 2015, the Commission received from Lee Mechanical Contractors (“Lee”) 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). On September 9, 2015, the Commission received a second motion to reopen from Lee.<sup>2</sup>

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

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<sup>1</sup> This case has been delegated to a panel of three Commissioners pursuant to section 113(c) of the Mine Act for the limited purpose of assessing the merits of the motion to reopen. 30 U.S.C. § 823(c).

<sup>2</sup> Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers CENT 2015-522-M and CENT 2015-618-M; both captioned Lee Mechanical Contractors, and involving similar procedural issues. 29 C.F.R. § 2700.12.

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 for Docket No. CENT 2015-522-M was delivered on April 28, 2015, and became a final order of the Commission on May 28, 2015. Lee asserts that it timely contested the proposed assessment, but sent the contest paperwork to MSHA’s St. Louis, Missouri payment processing center instead of the Arlington, Virginia Civil Penalty Compliance Office. Lee claims that it became aware of the problem when it received a delinquency notice from MSHA. The Secretary affirms that MSHA mailed a delinquency notice on July 13, 2015. Lee asserts that it has changed its office procedures to prevent mistaken address problems from occurring in the future.

MSHA records reflect that the proposed assessment for Docket No. CENT 2015-618-M was delivered on June 20, 2015, and became a final order on July 20, 2015. Lee asserts that it timely contested the proposed assessment, but sent the contest paperwork to MSHA’s St. Louis, Missouri payment processing center instead of the Arlington, Virginia Civil Penalty Compliance Office. According to Lee, the penalty assessments for the citations involved in Docket Nos. CENT 2015-522-M and CENT 2015-618-M were received and addressed around the same time. Lee claims that it did not discover the error in Docket No. CENT 2015-618-M until after it submitted the motion to reopen for Docket No. CENT 2015-522-M and reviewed its citation history on MSHA’s website.

The Secretary does not oppose the requests to reopen these cases, but urges the operator to take steps to ensure that future penalty contests are timely filed.

Having reviewed Lee's request and the Secretary's response, 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.

  
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Mary Lu Jordan, Chairman

  
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Patrick K. Nakamura, Commissioner

  
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William I. Althen, Commissioner

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