

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

APR 07 2016

: Docket No. LAKE 2015-610-M
: A.C. No. 21-00820-377787

v.

: Docket No. LAKE 2015-611-M
: A.C. No. 21-03352-380093

UNITED STATES STEEL
CORPORATION

:
:

BEFORE: Jordan, Chairman; Nakamura, and Althen, Commissioners¹

ORDER

BY THE COMMISSION:

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”). On July 31, 2015, the Commission received from United States Steel Corporation (“U.S. Steel”) 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).²

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

¹ 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).

² Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers LAKE 2015-610-M and LAKE 2015-611-M; both captioned United States Steel Corporation, 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. LAKE 2015-610-M was delivered on April 6, 2015, and became a final order of the Commission on May 6, 2015. MSHA records indicate that the proposed assessment for Docket No. LAKE 2015-611-M was delivered on May 4, 2015, and became a final order of the Commission on June 3, 2015. MSHA issued delinquency notices for both dockets on July 20, 2015. U.S. Steel asserts that it timely contested the penalties, but sent the contests to MSHA’s Payment Center in St. Louis, Missouri, instead of MSHA’s Civil Penalty Compliance Office in Arlington, Virginia. The operator has since retrained its personnel. 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 U.S. Steel’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.



Mary Lu Jordan, Chairman



Patrick K. Nakamura, Commissioner



William I. Althen, Commissioner

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