

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVE., N.W., SUITE 520N  
WASHINGTON, DC 20004-1710

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

APR 07 2016

v.

PINTO VALLEY MINING  
CORPORATION

:  
:  
: Docket No. WEST 2015-790-M  
: A.C. No. 04-01049-375473  
:  
:  
:

BEFORE: Jordan, Chairman; Nakamura and Althen, 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 July 28, 2015, the Commission received from Pinto Valley Mining Corporation (“Pinto Valley”) 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).

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 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 March 9, 2015, and became a final order of the Commission on April 8, 2015. Pinto Valley asserts that the penalty assessments for the citations involved in this case were lost somewhere between the mail run and the Administration Building's mail room. Pinto Valley claims that, as a result of this clerical error, the penalty assessments never reached Pinto Valley's Safety Coordinator. Pinto Valley further states that the citations at issue are part of a group of 60 citations that were issued in the same inspection, and the majority of these citations were grouped into a different case number. The Secretary notes that a delinquency notice was mailed to the operator on May 26, 2015, and the case was referred to the U.S. Department of Treasury for collection on July 23, 2015, because no response was received from Pinto Valley. 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.

In considering whether an operator has unreasonably delayed in filing a motion to reopen, we find relevant the amount of time that has passed between an operator's receipt of a delinquency notice and the operator's filing of its motion to reopen. *See, e.g., Left Fork Mining Co.*, 31 FMSHRC 8, 11 (Jan. 2009); *Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009) (holding that motions to reopen filed more than 30 days after receipt of notice of delinquency must explain the reasons why the operator waited to file a reopening request, and lack of explanation is grounds for the Commission to deny the motion). Here, the delay in responding to MSHA's delinquency notice amounted to more than 30 days. While Pinto Valley explained its failure to timely contest the proposed assessment, it failed to explain its delay in filing this motion to reopen after receiving the delinquency notice. This lack of explanation is normally grounds for denial. In this case, however, the operator has no history of filing motions to reopen. Additionally, the Secretary does not oppose reopening, but states that he will oppose future motions to reopen penalty assessments that are not contested in a timely manner.

Having reviewed Pinto Valley's request and the Secretary's response, in the interest of justice, we hereby reopen this matter and remand it 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

Distribution:

Mark N. Savit, Esq.  
Jackson Lewis P.C.  
950 17<sup>TH</sup> St., Suite 2600  
Denver, CO 80202  
[Mark.Savit@jacksonlewis.com](mailto:Mark.Savit@jacksonlewis.com)

W. Christian Schumann, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
201 12<sup>th</sup> St., South, Suite 401  
Arlington, VA 22202-5450

Melanie Garris  
Office of Civil Penalty Compliance  
MSHA  
U.S. Dept. Of Labor  
201 12<sup>th</sup> Street South, Suite 401  
Arlington, VA 22202-5450

Chief Administrative Law Judge Robert J. Lesnick  
Federal Mine Safety & Health Review Commission  
Office of Administrative Law Judges  
1331 Pennsylvania, Ave., Suite 520N  
Washington, D.C. 20004-1710