

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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April 12, 2023

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. LAKE 2023-0074
v.	:	A.C. No. 12-00426-566346
	:	
CARMEUSE LIME AND STONE, INC.	:	

BEFORE: Jordan, Chair; Althen, Rajkovich, and Baker, 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. (2018) (“Mine Act”). On January 26, 2023, the Commission received from Carmeuse Lime and Stone, Inc. (“Carmeuse”) 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 November 16, 2022, and became a final order of the Commission on December 16, 2022. Carmeuse asserts that it timely filed Notices of Contest with the Commission for three of thirteen penalties at issue.¹ When MSHA issued the proposed assessment, Carmeuse’s Senior Area Safety and Health Manager was on vacation. He did not receive a paper copy of the assessment (receiving an electronic version instead) and, upon his return, he mistakenly failed to file a timely contest. However, Carmeuse diligently monitored MSHA’s website and quickly learned that the citations had become final orders. Carmeuse then promptly filed a motion to reopen prior to the issuance of a delinquency notice. 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.²

Having reviewed Carmeuse’s request and the Secretary’s response, we find that the operator clearly expressed its intent to contest the citations by initiating contest proceedings with the Commission and that Carmeuse’s failure to timely file a contest with MSHA was due to inadvertence or mistake within the meaning of Rule 60(b)(1). *Asarco LLC*, 42 FMSHRC 308, 310 (Apr. 2020). Moreover, Carmeuse diligently monitored MSHA’s website to assess the status

¹ The Contest Proceedings are docketed as LAKE 2023-005, LAKE 2023-0008, and LAKE 2023-0009.

² According to Carmeuse, its Senior Area Safety and Health Manager is responsible for reviewing and contesting all proposed penalties received at 12 of the operator’s mines. Given the importance of this position in the contesting process, we urge Carmeuse to ensure backup procedures are in place for receiving proposed penalties when the manager is unavailable.

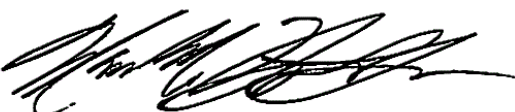
of the penalties and took prompt action to file a motion to reopen after it discovered its mistake. In the interest of justice, we hereby reopen this matter and remand it to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. 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, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner



Timothy J. Baker, Commissioner

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