

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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SECRETARY OF LABOR, **APR 2:0 2016**
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), :
v. : Docket No. WEST 2014-482-M
: A.C. No. 04-02542-323448
C.R. MEYER & SONS COMPANY, INC., :

BEFORE: Jordan, Chairman; Young, Cohen, 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 March 4, 2014, the Commission received from C.R. Meyer & Sons Company, Inc. (“C.R. Meyer”) 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 June 5, 2013. MSHA

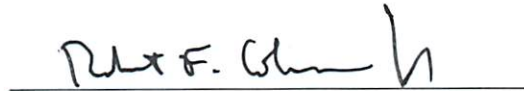
received payment from C.R. Meyer by check dated June 11, 2013. C.R. Meyer asserts that its accounting department, which received the proposed penalty assessment, inadvertently paid the penalty. C.R. Meyer asserts that it intended to contest the proposed assessment, and would have done so if its counsel had received a copy of the proposed assessment. In this regard, C.R. Meyer had filed a contest to the underlying citation in this matter on May 22, 2013. The Secretary opposes the request to reopen.


When reviewing an operator's motion to reopen a proposed assessment, we consider whether the operator has contested the citation underlying the proposed assessment. *Lone Mountain Processing, Inc.*, 35 FMSHRC 3342, 3346-47 (Nov. 2013). As stated above, C.R. Meyer had contested the underlying citation. Furthermore, we also note that the counsel for the operator has demonstrated a diligent effort to keep track of the citation and the proposed assessment through his correspondence with MSHA and with attorneys representing the Secretary of Labor. In this regard, operator's counsel was informed by an attorney representing the Secretary of Labor that he should communicate with her rather than with MSHA. Furthermore, operator's counsel, who received the citation, believed that he would also receive a copy of the proposed assessment and was unaware that the operator's accounting department had received and paid the proposed assessment. Lastly, operator's counsel, after learning about the proposed assessment on February 19, 2014, promptly filed a motion to reopen this matter, received by the Commission on March 4, 2014. Therefore, it is clear that the payment by the operator was the result of a mistake.

Having reviewed C.R. Meyer'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


Michael G. Young, Commissioner


Robert F. Cohen Jr., Commissioner


Patrick K. Nakamura, Commissioner


William I. Althen, Commissioner

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