

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N

WASHINGTON, D.C. 20004-1710

APR 30 2015

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

v.

ROCKSPRING DEVELOPMENT, INC.

Docket No. WEVA 2014-175
A.C. No. 46-05121-283802-02

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

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 November 18, 2013, the Commission received from Rockspring Development, Inc. (“Rockspring”) a motion seeking to reopen Citation Nos. 8150547 and 8142619 that became 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).

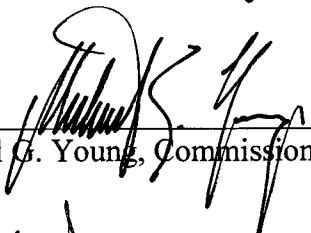
We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“*JWR*”). In evaluating requests to reopen final orders, the Commission 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).

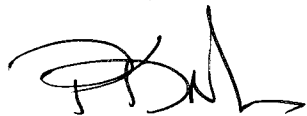
¹ Commissioner Cohen has elected not to participate in this matter.

Records of the Department of Labor's Mine Safety and Health Administration ("MSHA") indicate that on April 2, 2012, Rockspring timely contested 21 proposed penalty assessments that had been issued on March 15, 2012. On April 9, 2012, Rockspring sent an amended contest to MSHA indicating that it wished to contest an additional two penalties. MSHA acknowledges that it received both contests but states that the amended contest was ignored because MSHA believed it to be a duplicate. Rockspring asserts that the amended contest was timely filed and should have been docketed with the other citations. The Secretary does not oppose the request to reopen.

Having reviewed Rockspring's request and the Secretary's response, we find that Rockspring timely contested Citation Nos. 8150547 and 8142619 and, therefore, they did not become a final order of the Commission. Accordingly, the request to reopen is dismissed as moot, and this case is remanded 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.


Mary Lu Jordan, Chairman


Michael G. Young, Commissioner


Patrick K. Nakamura, Commissioner


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