

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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May 2, 2022

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. SE 2021-0006
v.	:	A.C. No. 09-01195-521518
	:	
SOUTHEASTERN PRIMARY	:	
MINERALS LLC	:	

BEFORE: Traynor, Chair; Althen and Rajkovich, 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 July 14, 2021, the Commission received from Southeastern Primary Minerals LLC (“SPM”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On January 25, 2021, the Chief Administrative Law Judge issued an Order to Show Cause in response to SPM’s perceived failure to answer the Secretary of Labor’s November 24, 2020, Petition for Assessment of Civil Penalty. A second Order to Show Cause was issued on March 29, 2021. By its terms, the second Order to Show Cause was deemed a Default Order on April 28, 2021, when it appeared that the operator had not filed an answer within 30 days.

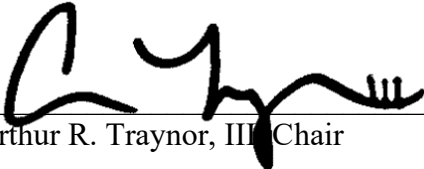
SPM asserts that a timely response to the Petition was mailed to the Mine Safety and Health Administration’s (“MSHA”) Birmingham office, and that after receiving the second Order to Show Cause, the operator contacted MSHA to explain that a response had already been submitted. SPM states that it now understands the responses to the Petition and Order should have been filed with the Commission. The Secretary does not oppose the request to reopen but reminds the operator to ensure all future responses are timely filed in accordance with MSHA’s regulations at 30 C.F.R. § 100.7 and the Commission’s procedural rules at 29 C.F.R. Part 2700.

The Judge’s jurisdiction in this matter terminated when the default occurred. 29 C.F.R. § 2700.69(b). Under the Mine Act and the Commission’s procedural rules, relief from a judge’s decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2)(A)(i); 29 C.F.R. § 2700.70(a). If the Commission does not


direct review within 40 days of a decision's issuance, it becomes a final decision of the Commission. 30 U.S.C. § 823(d)(1). Consequently, the Judge's order here has become a final decision of the Commission.

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"); *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993). 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 will be permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Having reviewed SPM's request and the Secretary's response, we find that the operator's failure to properly file a response was the result of mistake. We remind the operator to closely read the instructions in any future orders received from the Commission. However, in the interest of justice, we hereby reopen the proceeding and vacate the Default Order. Accordingly, 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.


Arthur R. Traynor, III, Chair


William I. Althen, Commissioner


Marco M. Rajkovich, Jr., Commissioner

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