

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 2021-0076
v.	:	A.C. No. 01-01401-528527
	:	
WARRIOR MET COAL MINING 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 August 12, 2021, the Commission received from Warrior Met Coal Mining LLC (“WMC”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On June 14, 2021, the Chief Administrative Law Judge issued an Order to Show Cause in response to WMC’s perceived failure to answer the Secretary of Labor’s April 12, 2021, Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on July 14, 2021, when it appeared that the operator had not filed an answer within 30 days.

It appears that WMC attempted to timely file an answer to the Petition, but the filing was not accepted by the Commission’s e-filing system due to a typographical error in the caption. WMC asserts that it believed the answer had been accepted and was not aware of any problem with the filing.¹ WMC also states that it never received the Order to Show Cause, noting a typographical error in the distribution list, and asserts that it would have timely responded had it been aware of the Order. 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.

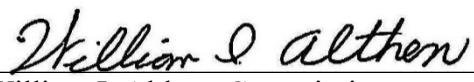
¹ WMC concedes that it received an automated notification from the Commission’s e-filing system stating that the filing had been rejected as duplicative, but assumed there would be further communication from the Commission if there was a problem.

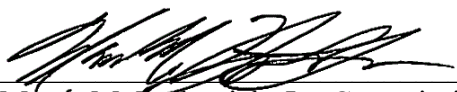
The Judge's jurisdiction in this matter terminated when the default occurred. 29 C.F.R. § 2700.69(b). Under the Mine Act and the Commission's procedural rules, relief from a judge's decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2)(A)(i); 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 WMC's request and the Secretary's response, we find that the lack of timely response was due to mistake. 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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