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. YORK 2022-0011
v.	:	A.C. No. 06-00005-509944
	:	
STONY CREEK QUARRY	:	
CORPORATION		

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 November 23, 2021, the Commission received from Stony Creek Quarry Corporation ("Stony Creek") 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 March 10, 2020, and became

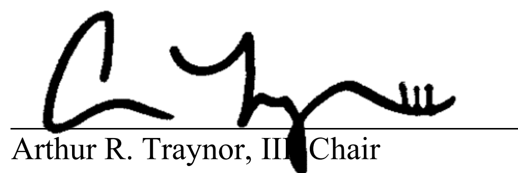
a final order of the Commission on April 9, 2020. Stony Creek asserts that it left a message regarding the assessment with MSHA's Civil Penalty Compliance Office, but did not receive a return call, and assumed that MSHA's operations had been disrupted by the pandemic. The Secretary opposes the request to reopen, noting that a delinquency notice was mailed to the operator on May 26, 2020, and the case was referred to the U.S. Department of Treasury for collection on July 23, 2020.

Based on representations by the Secretary, it appears Stony Creek attempted to file a notice of contest for the proposed assessment with MSHA (called a "request for a hearing" by the parties) on February 10, 2021. On February 25, 2021, MSHA sent a response denying the request as untimely and explaining that the case had become final in April 2020. Stony Creek states that, at some point, it received a call from MSHA and was advised to file a motion to reopen the assessment. A motion to reopen was ultimately filed in November 2021.

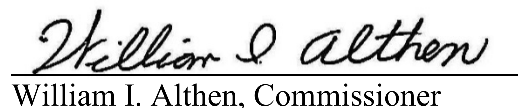
Due to the extraordinary nature of reopening a penalty that has become final, the operator has the burden of showing that it should be granted such relief through a detailed explanation of its failure to timely contest the penalty and any delays in filing for reopening. The Commission considers the entire range of factors relevant to determining mistake, inadvertence, excusable neglect, or other good faith reason for reopening. Further, Rule 60(c) of the Federal Rules of Civil Procedure provides that a Rule 60(b) motion shall be made within a reasonable time, and for reasons of mistake, inadvertence, or excusable neglect, not more than one year after the judgment, order, or proceeding was entered or taken. Fed. R. Civ. P. 60(c).

This motion to reopen was filed more than one year after becoming a final order. Therefore, under Rule 60(c), Stony Creek's motion is untimely. *J S Sand & Gravel, Inc.*, 26 FMSHRC 795, 796 (Oct. 2004).

Accordingly, we deny Stony Creek's motion.



Arthur R. Traynor, III, Chair



William I. Althen, Commissioner

Marco M. Rajkovich, Jr., Commissioner

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