

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVE., N.W., SUITE 520N

WASHINGTON, DC 20004-1710

**MAY 04 2018**

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

v.

SAN JUAN COAL CO.

:  
:  
:  
:  
:  
:  
:  
:  
:

Docket No. CENT 2017-325  
A.C. No. 29-02170-426933

BEFORE: Althen, Acting Chairman; Jordan, Young, and Cohen, 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 May 12 2017, the Commission received from San Juan Coal Co. (“San Juan”) 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), 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).

San Juan asserts that it received the Secretary’s proposed penalty assessment on or about January 4, 2017. It further asserts that it inadvertently sent the contest form to MSHA’s St.

Louis office with a check for uncontested citations instead of to the Arlington office. San Juan's check for partial payment of the assessment was dated January 17, 2017.

The operator claims that the safety manager at San Juan reviewed the assessment and selected four citations that the company intended to challenge. San Juan claims the safety manager then forwarded this information to the accounts payable department. The operator asserts that the Secretary received the payment for the citations it did not intend to contest. However, the operator asserts that as a result of a clerical error the contest was mailed with the check. The operator alleges that it only learned of the problem when it received a delinquency notice on or around April 17, 2017.<sup>1</sup> Upon learning of the mistake, the operator changed its contest procedures so that safety personnel will now handle all correspondence related to the contest of proposed penalties at the mine. San Juan has not filed any other motions to reopen with the Commission in the last two years. The Secretary does not oppose the request to reopen, but urges the operator to take steps to ensure that future penalty contests are timely filed.

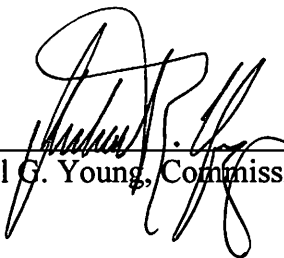
---

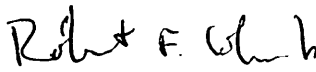
<sup>1</sup> The delinquency notice was dated April 4, 2017. The Secretary does not challenge the operator's assertion that it was received on April 17, 2017.

Having reviewed San Juan's request and the Secretary's response, we find that the operator inadvertently sent its notice of contest to the wrong address. The operator changed its office procedures to prevent the mistake from happening again. 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.

  
\_\_\_\_\_  
William I. Althen, Acting Chairman

  
\_\_\_\_\_  
Mary Lu Jordan, Commissioner

  
\_\_\_\_\_  
Michael G. Young, Commissioner

  
\_\_\_\_\_  
Robert F. Cohen, Jr., Commissioner

Distribution:

Jere C. Overdyke III, Esq.  
Holland & Hart LLP  
P.O. Box 68  
Jackson, WY 83001

Ali Beydoun, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
201 12th St. South, Suite 401  
Arlington, VA 22202-5450

Chief Administrative Law Judge Robert J. Lesnick  
Federal Mine Safety & Health Review Commission  
1331 Pennsylvania Ave. N.W., Suite 520N  
Washington, DC 20004-1710

Melanie Garris  
Office of Civil Penalty Compliance  
Mine Safety and Health Administration  
U.S. Department of Labor  
201 12th St. South, Suite 500  
Arlington, VA 22202-5450