

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

MAY 04 2018

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
 :
v. : Docket No. YORK 2018-5-M
 : A.C. No. 30-03255-435700
 :
AMERICAN ROCK SALT COMPANY, :
LLC :

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 October 17, 2017, the Commission received from American Rock Salt Company, LLC (“American”) 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).

Records of the Department of Labor's Mine Safety and Health Administration ("MSHA") indicate that the proposed assessment was delivered on April 12, 2017, and became a final order of the Commission on May 12, 2017. American asserts that it timely filed a notice of contest regarding the proposed civil penalty of \$7,000 for Order No. 9310579, and at the same time sent MSHA a check for \$884 for the remaining penalties in the proposed assessment at issue. The operator only learned that there was a problem with the contest when it received a delinquency letter dated June 28, 2017. American asserts that on July 7, 2017, it wrote a letter to the MSHA compliance office protesting that it had filed the notice of contest and suggesting that it had received the delinquency letter in error. The operator asserts that it received no response from the compliance office by October 11, 2017. American claims it contacted the compliance office on that day and learned that it was required to file a request to reopen. The request was filed six days later on October 17, 2017.¹ American 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. The Secretary does not dispute American's assertion that it filed a timely notice of contest, and confirms that MSHA received a check for \$884 for penalties contained in the proposed assessment.

¹ While American's request to reopen was filed more than 30 days after the delinquency notice, we note that the operator had contacted the MSHA compliance office immediately upon receiving the delinquency letter and diligently pursued this matter until the mistake was discovered.

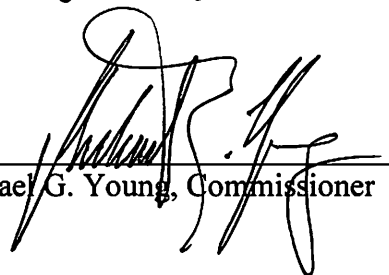
Having reviewed American's request and the Secretary's response, we find that good cause exists for granting American's motion. In the interest of justice, we hereby reopen this matter and remand it to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's 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

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