



Records of the Department of Labor's Mine Safety and Health Administration ("MSHA") indicate that the proposed assessment was delivered on May 14, 2016, and became a final order of the Commission on June 13, 2016.

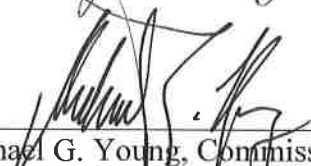
Continental Cement asserts that its failure to timely file its contest to the proposed assessment was due to the unusually busy personal and work-related travel schedule of the mine's health and safety manager, who was charged with contesting the penalties at the mine. The operator states that upon receipt of the proposed assessment, it forwarded the assessment to the health and safety manager, who was on vacation. Upon returning from vacation, the health and safety manager's work schedule included two weeks of new miner safety training, an audit, and an MSHA inspection. Continental Cement discovered its default on its own and filed its motion 25 days after the order became final. The operator provides an affidavit from the health and safety manager that supports its claims.

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.

Having reviewed Continental Cement's request and the Secretary's response, we conclude that the operator's failure to timely contest the two citations herein was the result of inadvertence and mistake on the part of a single individual. 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:

Dinah L. Choi, Esq.  
Ogletree, Deakens, Nash, Smoak & Stewart, P.C.  
The KOIN Center, Suite 1500  
Portland, OR 97201

Matt Helms  
Plant Manager  
10107 Highway 79  
Hannibal, MO 63401

W. Christian Schumann, Esq.  
Office of the Solicitor  
U.S. Department of Labor  
201 12th St. South, Suite 500  
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