

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710

May 16, 2024

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

v.

HAMILTON COUNTY COAL, LLC

:
:
:
: Docket No. LAKE 2023-0037
: A.C. No. 11-03203-565749
:
:

BEFORE: Jordan, Chair; Althen, Rajkovich, Baker, and Marvit, 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 May 26, 2023, the Commission received from Hamilton County Coal, LLC a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On February 27, 2023, the Chief Administrative Law Judge issued an Order to Show Cause in response to Hamilton’s perceived failure to answer the Secretary of Labor’s December 27, 2022, Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on March 30, 2023, when it appeared that the operator had not filed an answer within 30 days.

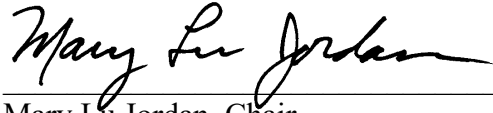
Hamilton County Coal requests reopening based on excusable neglect. The operator timely returned a contest of the civil penalty associated with Citation No. 9195453 listed on Proposed Assessment No. 0005655749. When the operator's safety director was reviewing a separate proposed penalty assessment, he noticed that the form listed Docket No. LAKE 2023-0037 as a final decision and that payment was pending for the penalty associated with Citation No. 919453. The Safety Director had no record of the docket number but discovered upon investigation the docket had been transferred to a Conference and Litigation Representative ("CLR"). The CLR provided the safety director with a copy of the subject petition, and March 29 order. The Safety Director noted that his email address had been listed incorrectly in the order's distribution list, and was informed that MSHA did not have a return receipt showing delivery of the petition. The safety director states that as a miner's representative, he should have received a copy of the petition at his home, but that he did not.

The Secretary does not oppose the motion to reopen. She submits that the petition was delivered to the operator's address of record, but that she does not know why the operator did not receive it. The Secretary further states that she does not know, and Hamilton has not explained, why the operator did not follow up on its contest. The Secretary encourages the operator to be more vigilant with receiving and processing petitions and to comply with the Commission's procedural rules.

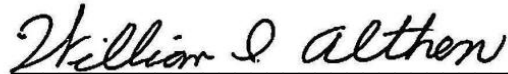
The Judge's jurisdiction in this matter terminated when the default occurred. 29 C.F.R. § 2700.69(b). Under the Mine Act and the Commission's procedural rules, relief from a judge's decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2)(A)(i);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

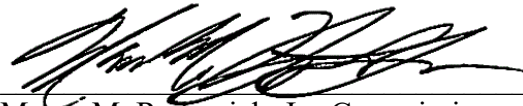
Having reviewed Hamilton's request and the Secretary's response, we find that the operator's failure to properly file a response was the result of excusable neglect. In the interest of justice, we hereby reopen the proceeding and vacate the Default Order. Accordingly, this case is remanded to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.



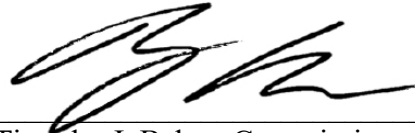
Mary Lu Jordan, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner



Timothy J. Baker, Commissioner



Moshe Z. Marvit, Commissioner

Distribution:

Mike Hathaway
Hamilton County Coal, LLC
18033 County Rd. 500 East
Dahlgren, IL 62828
mike.hathaway@arlp.com

Tyler H. Fields, Esq.
Hamilton County Coal, LLC
1146 Monarch Street, Suite 350
Lexington, KY 40513
tyler.fields@arlp.com

Emily Toler-Scott, Esq.
Office of the Solicitor
U.S. Department of Labor
201 12th St. South, Suite 401
Arlington, VA 22202-5450
Scott.Emily.T@dol.gov

April Nelson, Esq.
Associate Solicitor
Office of the Solicitor
U.S. Department of Labor
Division of Mine Safety and Health
201 12th Street South, Suite 401
Arlington, VA 22202
Nelson.April@dol.gov

Chief Administrative Law Judge Glynn Voisin
Federal Mine Safety & Health Review Commission
Office of the Chief Administrative Law Judge
1331 Pennsylvania Ave. N.W., Suite 520N
Washington, DC 20004-1710
GVoisin@fmshrc.gov

Melanie Garris
Office of Civil Penalty Compliance
Mine Safety and Health Administration
U.S. Department of Labor
201 12th St. South, Suite 401
Arlington, VA 22202-5450
Garris.Melanie@dol.gov