

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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May 17, 2024

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. CENT 2024-0206
ADMINISTRATION (MSHA)	:	A.C. No. 41-02916-569870
	:	
v.	:	Docket No. CENT 2023-0020
	:	A.C. No. 41-02916-569870
ALLEYTON RESOURCE COMPANY,	:	
LLC	:	

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 March 21, 2023, the Commission received from Alleyton Resource Company, LLC (“Alleyton”) 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).¹

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

¹ We hereby consolidate docket numbers CENT 2023-0020 (contest proceeding), and CENT 2024-0206 (civil penalty proceeding) because they both involve contests relating to Citation No. 9513801. 29 C.F.R. § 2700.12.

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 to Alleyton on January 23, 2023, and became a final order of the Commission on February 22, 2023. In its motion to reopen, the operator states that it timely filed a notice of contest of Citation No. 9513801, by counsel. The proposed penalty assessment related to the citation was not served on Alleyton’s counsel. The operator states that the proposed assessment form was sent for payment by the operator’s administrative staff who did not realize that the citation had been contested. Alleyton’s counsel discovered the mistaken payment while reviewing MSHA’s Mine Data Retrieval System (“MDRS”).² On May 23, 2023, the Secretary filed a response indicating that she does not oppose the operator’s request to reopen.³

Subsequently, the Secretary filed a motion to dismiss the contest proceeding as moot. In the motion to dismiss, the Secretary argued that, although the operator filed a notice of contest of Citation No. 9513801, it failed to contest the penalty associated with the citation. The motion makes no reference to the Secretary’s previously filed non-opposition to Alleyton’s motion to reopen.

² Commissioner Baker has previously stated that it is his position that the accidental payment of a civil penalty does not constitute excusable neglect. *See, e.g., Omya, Inc.*, 45 FMSHRC 131 (Mar. 2023). However, in light of the fact that the operator filed a timely contest to the underlying citation, Commissioner Baker would determine that in the instant case payment was not the result of an inadequate or unreliable internal processing system. *See Greenbrief Mineral, LLC*, 45 FMSHRC 822, 823 n.1 (Sep. 2023).

³ The Secretary also noted that the motion to reopen was erroneously filed under the docket number assigned to the notice of contest rather than being assigned a separate civil penalty proceeding docket number. We have corrected this docketing error, and the correct docket numbers appear in the caption of this order.

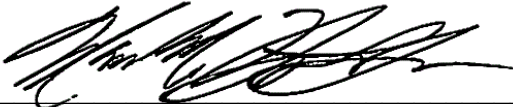
Having reviewed Alleyton’s request and the Secretary’s response, we find that the operator has demonstrated that its failure to timely file a contest of the proposed penalty was the result of a mistake. The operator demonstrated that the mistake was made in good faith by proactively reviewing MSHA’s MDRS and promptly moving to reopen upon discovery of the error.⁴ The operator was also timely in its filing of a notice of contest of Citation No. 9513801. Accordingly, we hereby deny the Secretary’s motion to dismiss. In the interest of justice, we 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. 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.



Mary Lu Jordan, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner



Timothy J. Baker, Commissioner



Moshe Z. Marvit, Commissioner

⁴ The Commission has held that “[m]otions to reopen received within 30 days of an operator’s receipt of its first notice from MSHA that it has failed to timely file a notice of contest of a proposed civil penalty will be presumptively considered as having been filed within a reasonable amount of time.” *Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009). Here, the proposed penalty assessment became a final order of the Commission on February 22, 2023, and the operator filed its motion to reopen on March 21, 2023.

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