

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N

WASHINGTON, DC 20004-1710

MAY 18 2015

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

v.

JUSTIN HERSHMAN,
formerly employed by
CONSOLIDATION COAL
COMPANY

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: Docket No. WEVA 2014-1997
: A.C. No. 46-01433-336289 A
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BEFORE: Jordan, Chairman; Young, Nakamura, and Althen, Commissioners¹

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 August 4, 2014, the Commission received from Justin Hershman (“Hershman”) a motion seeking to reopen a penalty assessment under section 110(c) of the Mine Act, 30 U.S.C. § 820(c), that had appeared to become a final order of the Commission.

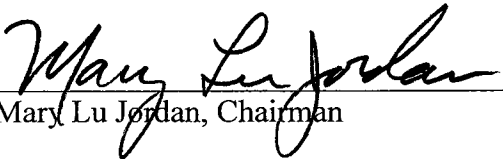
Under the Commission’s Procedural Rules, an individual charged under section 110(c) has 30 days following receipt of the proposed penalty assessment within which to notify the Secretary of Labor that he or she wishes to contest the penalty. 29 C.F.R. § 2700.26. If the individual fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 29 C.F.R. § 2700.27.

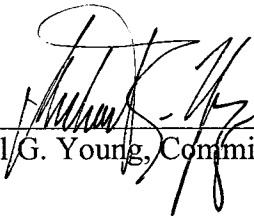
Hershman asserts that it never received the proposed penalty assessment because the Secretary mailed it to the wrong address. The Secretary confirms this, and states that once MSHA re-mailed the proposed assessment to the correct address, it was timely contested by Hershman.


¹ Commissioner Cohen has elected not to participate in this matter.

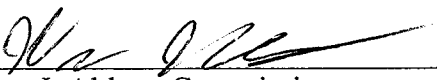
Having reviewed Hershman's request and the Secretary's response, we conclude that the proposed penalty assessment did not become a final order of the Commission because the operator never received the proposed assessment. This obviates any need to invoke Rule 60(b) of the Federal Rules of Civil Procedure in order to consider reopening a final order.

Accordingly, the operator's motion to reopen is moot, and 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, Chairman


Michael G. Young, Commissioner


Patrick K. Nakamura, Commissioner


William I. Althen, Commissioner

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