

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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MAY 18 2017

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) : Docket No. PENN 2016-278
v. : A.C. No. 36-08391-405897
SUSQUEHANNA COAL COMPANY :

BEFORE: Althen, Acting Chairman; Jordan, Young, and Cohen, Commissioners

ORDER

BY: Althen, Acting Chairman; Jordan, and Young, Commissioners

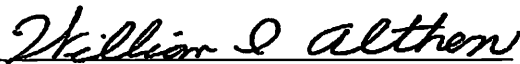
This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”). On July 25, 2016, the Commission received from Susquehanna Coal Company (“Susquehanna”) a motion seeking to reopen a penalty assessment that had become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).


Under section 105(a) 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).

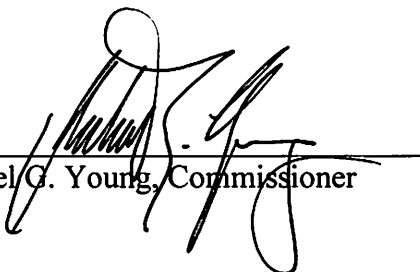
We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“*JWR*”). In evaluating requests to reopen final orders, the Commission 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 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 20, 2016, and became a final order of the Commission on May 20, 2016. Susquehanna asserts that the proposed assessment was sent to an office that is not located on mine property and is only occasionally occupied. The operator further asserts through an affidavit that while it has received MSHA documents at this address, it cannot recall receiving the assessment at issue. In addition, Susquehanna claims that it always intended to contest the penalties. Finally, the operator states that it is in the process of taking steps to change the address in the MSHA database to ensure that future documents will be delivered to the mine office that is occupied during normal business hours. 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 Susquehanna’s request and the Secretary’s response, 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 L. Jordan, Commissioner


Michael G. Young, Commissioner

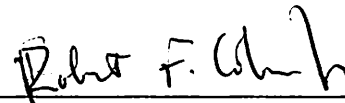
Commissioner Cohen, dissenting:

I disagree with my colleagues' decision because I believe that the record does not contain sufficient information to establish good cause to reopen this civil penalty proceeding.

In its motion to reopen, Susquehanna Coal Co. states, "the Proposed Assessment and Statement of Account was never received at the address noted on the Proposed Assessment." In an affidavit supporting the motion, Susquehanna's general manager at the mine further avers that the operator has received other MSHA documents at the office listed as its address of record, but the company does not recall receiving this penalty assessment. In response, the Secretary states that the proposed assessment was delivered by USPS Certified Mail on April 20, 2016. The Secretary did not provide a copy of the return receipt or any other means of verifying its mailing records.

The parties' two statements, taken at face value, appear to be irreconcilable. Because the operator's request for relief is based wholly upon its assertion that the penalty assessment was never delivered, I cannot agree to reopen this final civil penalty assessment on the conflicting record before us. I would remand the case to the Chief Administrative Law Judge for development of the record on the issue of whether Susquehanna Coal received the proposed assessment.

Accordingly, I dissent.



Robert F. Cohen, Jr., Commissioner

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