

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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WASHINGTON, DC 20004-1710

May 22, 2019

SECRETARY OF LABOR, :  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA) :  
: Docket No. LAKE 2018-304  
v. : A.C. No. 11-03141-459475  
: :  
MACH MINING, LLC :

BEFORE: Rajkovich, Chairman; Jordan, Young, Althen, and Traynor, 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. (2012) (“Mine Act”). On July 3, 2018, the Commission received from Mach Mining, LLC (“Mach Mining”) 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 March 5, 2018, and became a final order of the Commission on April 4, 2018. MSHA mailed a delinquency notice to Mach Mining on June 15, 2018.

Mach Mining asserts that its failure to timely contest the Proposed Penalty Assessment was caused by inadvertence by its Assistant Corporate Safety Director. Mach Mining personnel reviewed the Proposed Penalty Assessment and decided to contest six of the twenty-seven citations and pay the penalties for the remaining citations. However, the Assistant Corporate Safety Director, who was responsible for contesting or paying the various citations, failed to do so. According to an affidavit signed by the Assistant Corporate Safety Director, he realized his oversight when Mach Mining received a delinquency notice from MSHA on June 28, 2018. He immediately contacted outside counsel, who filed a Motion to Reopen on July 3, 2018, within a week of receipt of the delinquency notice. In its Motion, Mach Mining states that it has changed its contest procedures in order to prevent future errors. The Secretary does not oppose the request to reopen.

Having reviewed Mach Mining's request and the Secretary's response, we find that the operator's failure to timely contest the assessment was the result of inadvertence. 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.



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Marco M. Rajkovich, Jr., Chairman



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Mary Lu Jordan, Commissioner



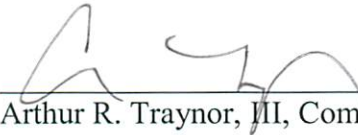
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Michael G. Young, Commissioner



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William I. Althen, Commissioner



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Arthur R. Traynor, III, Commissioner

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