

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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May 22, 2019

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
 : Docket No. WEVA 2018-480
v. : A.C. No. 46-08625-456831
 :
KINGSTON MINING, INC. :

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 May 18, 2018, the Commission received from Kingston Mining, Inc. (“Kingston”) 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 January 19, 2018, and became a final order of the Commission on February 20, 2018.

Kingston asserts that its failure to timely contest the Proposed Penalty Assessment was the result of human error in the use of its case management system. Kingston states that it uses a software program to manage citations. The software alerts Kingston of the contest filing deadlines for each citation. However, Kingston asserts that a safety analyst inadvertently entered the wrong case number into the company safety database. When inputting the relevant information for this case, she mislabeled the case number as "454631" rather than "456831." Thus, the system did not alert Kingston of the need to contest the citations. On or about May 11, 2018, Kingston received a delinquency notice from MSHA dated May 4, 2018. Kingston filed a Motion to Reopen on May 18, 2018, about one week after it received the delinquency notice. The Secretary does not oppose the request to reopen.


Having reviewed Kingston's request and the Secretary's response, we find that the operator's failure to timely contest the assessment was the result of a clerical mistake which was promptly addressed. 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.




Marco M. Rajkovich, Jr., Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



William I. Althen, Commissioner



Arthur R. Traynor, III, Commissioner

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