# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710

**May 28, 2024**

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| SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA) | : | |
| | : | Docket No. WEVA 2023-0351 |
| v. | : | A.C. No. 46-08878-568995 |
| POCAHONTAS COAL 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 June 2, 2023, the Commission received from Pocahontas Coal Company ("Pocahontas") 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 11, 2023, and became a final order of the Commission on February 10, 2023. Pocahontas asserts that the proposed penalty was not timely contested because an "administrative error" delayed outside counsel's receipt of the assessment. The Secretary opposes the request to reopen and notes that a delinquency notice was mailed to the operator on March 28, 2023.

A party seeking to reopen a final penalty bears the burden of showing that it is entitled to such relief, through a detailed explanation of its failure to timely respond. *Revelation Energy, LLC*, 40 FMSHRC 375, 375-76 (Mar. 2018). General assertions or conclusory statements are insufficient. *Southwest Rock Prod., Inc.*, 45 FMSHRC 747, 748 (Aug. 30, 2023); *B & W Res., Inc*., 32 FMSHRC 1627, 1628 (Nov. 2010). At a minimum, the applicant must provide all known details, including relevant dates and persons involved, and a clear explanation that accounts, to the best of the operator's knowledge, for the failure to submit a timely response. *Higgins Stone Co.*, 32 FMSHRC 33, 34 (Jan. 2010). Here, Pocahontas merely states that counsel did not timely receive the proposed assessment due to "administrative error," without further detail. We find this explanation insufficient to meet the operator's burden of showing that it is entitled to relief.

Pocahontas has also failed to explain the apparent delay in filing its motion to reopen. 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 will be presumptively considered as having been filed within a reasonable amount of time." *Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009). Conversely, however, motions to reopen filed more than 30 days after such notice "should include an explanation for why the operator waited so long to file for reopening," and "[t]he lack of such an explanation is grounds for the Commission to deny the motion." *Id.* Here, Pocahontas filed its motion more than three months after the assessment became final, and more than two months after the Secretary's delinquency notice. Pocahontas offers no explanation for the delay.[1]

[1] Pocahontas's motion notes that counsel was retained for purposes of filing a motion to reopen once the Safety Manager became aware the assessment had not been timely contested. However, the motion does not state *when* he became aware of the failure to timely contest. Whether Pocahontas learned of the issue upon receiving the delinquency notice but did not immediately file a motion to reopen or did not learn of the issue until well after receipt of the delinquency notice, an explanation is warranted. Without such detail, the Commission is unable to determine whether the motion was filed within a presumptively reasonable amount of time or whether any delay was reasonable.

Having reviewed Pocahontas's request and the Secretary's response, we find that the operator has not provided sufficient explanation to justify reopening the captioned proceeding. Accordingly, we deny Pocahontas's motion.

Mary Lu Jordan, Chair

William I. Althen, Commissioner

Marco M. Rajkovich, Jr., Commissioner

Timothy J. Baker, Commissioner

Moshe Z. Marvit, Commissioner

Distribution:

Justin K. Chandler, Esq.
Steptoe & Johnson PLLC
707 Virginia Street East, 17th Floor
PO Box 1588
Charleston, WV 25326-1588
Justin.chandler@steptoe-johnson.com

April Nelson, Esq.
Associate Solicitor
Office of the Solicitor
U.S. Department of Labor
Division of Mine Safety and Health
201 12th Street South, Suite 401
Arlington, VA 22202
Nelson.April@dol.gov

Emily Toler Scott, Esq.
Counsel for Appellate Litigation
Office of the Solicitor
U.S. Department of Labor
Division of Mine Safety and Health
201 12th Street South, Suite 401
Arlington, VA 22202
scott.emily.t@dol.gov

Melanie Garris
USDOL/MSHA, OAASEI/CPCO
201 12th Street South, Suite 401
Arlington, VA 22202
Garris.Melanie@DOL.GOV

Chief Administrative Law Judge Glynn F. Voisin
Federal Mine Safety Health Review Commission
Office of the Chief Administrative Law Judge
1331 Pennsylvania Avenue, NW Suite 520N
Washington, DC 20004-1710
GVoisin@fmshrc.gov