FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

June 11, 2024

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)	:	
	:	Docket No. WEVA 2023-0479
v.	:	A.C. No. 46-09602-573037
RAMACO RESOURCES, LLC	:	

BEFORE: Jordan, Chair; Althen, Rajkovich, Baker, and Marvit, Commissioners

ORDER

BY: Jordan, Chair; Rajkovich, Baker, and Marvit, Commissioners

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) ("Mine Act"). On August 7, 2023, the Commission received from Ramaco Resources, LLC ("Ramaco") 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).[1]

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

[1] Of the 38 citations listed in the relevant assessment, Ramaco seeks to reopen the following 11 citations: Nos. 9567490, 9567492, 9567499, 9592600, 9592603,9592608, 9592610, 9592613, 9592614, 9592619, and 9592620.

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 29, 2023, and became a final order of the Commission on April 28, 2023. Ramaco asserts that the assessment was not timely contested because it was not timely received by the Vice President of Safety. Ramaco was unable to identify the specific incident that delayed receipt, but notes that the safety department experienced significant employee turnover around the relevant time.[2] Ramaco also notes that it has subsequently conducted additional training for the new employees, and states that its low rate of filing motions to reopen indicates normally adequate policies and procedures.

The Secretary opposes the motion. The Secretary states that Ramaco's explanation is insufficient to justify relief, as the operator failed to identify a specific error, and that a failure to properly train personnel is not an excusable mistake. The Secretary also asserts that Ramaco's previous filing of a motion to reopen on May 18, 2023 indicates a pattern of failures to timely respond to assessments.

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, Ramaco has failed to identify the error that resulted in a failure to timely contest the assessment. The operator suggests it was likely due to staff turnover, but has failed to provide any details regarding the change in personnel or how it contributed to the processing delay. *See Sun West Acquisition Corp*, 45 FMSHRC 141 (Mar. 2023) (finding insufficient justification where an operator alleged loss of staff but failed to provide additional detail);

[2] Our dissenting colleague draws unreasonably tenuous inferences from the pleadings and presents them as fact. For example, the dissent states that Ramaco was experiencing "unusually high levels of staff turnover," and that the cause of the mistake was due to the new employees not sending the proposed assessment through the proper channels. However, Ramaco's pleadings and attached affidavits are careful to state that the operator could not determine the cause of the error, that it was "an error of unknown origin." The D.C. Circuit has recently admonished this Commission for trying to resolve cases sua sponte "on grounds that were not raised or litigated by the parties and pursuant to findings not supported by the record." *MSHA v. Westfall Aggregate and Materials*, 69 F. 4th 902, 912 (D.C. Cir. 2023). Furthermore, the fact that Ramaco filed its Motion to Reopen prior to receiving a delinquency notice does not "compel a finding of good faith" as our colleague contends. MSHA's records of Ramaco's delinquent penalties in the months prior to the filing of the instant Motion to Reopen, as pointed out by the Secretary, could lead one to draw a different conclusion. *See* Sec'y Resp. Br. at 3-5.

Revelation Energy LLC, 39 FMSHRC 1777 (Sept. 2017) (finding insufficient justification where a document was misplaced due to changes in personnel). We find Ramaco's explanation insufficient to justify relief.[3]

Having reviewed Ramaco'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 Ramaco's motion.

Mary Lu Jordan, Chair

Marco M. Rajkovich, Jr., Commissioner

Timothy J. Baker, Commissioner

Moshe Z. Marvit, Commissioner

[3] We also note that Ramaco has not provided any detail regarding the three-month delay in filing its motion to reopen. The operator simply states that it retained counsel to file the motion immediately upon becoming aware of the issue, without specifying when or how it learned of the issue. However, while the motion was filed three months after the assessment became final, it was filed two weeks *before* the Secretary mailed a delinquency notice (August 25, 2023). In this unusual circumstance, the motion could be considered to have been filed within a reasonable amount of time. *Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009) (motions received within 30 days of an operator's first notice from MSHA it has failed to timely contest will be presumptively considered to be filed within a reasonable amount of time). Regardless, for the reasons above, we find Ramaco has failed to justify its entitlement to relief.

Commissioner Althen, dissenting:

I respectfully dissent.

This motion to reopen involves an attempt by Ramaco to challenge 11 citations totaling over $44,000 in proposed penalties.

Although the precise nature of the error could not be determined, the facts are not contested. In March of 2023, Ramaco states that it was experiencing unusually high levels of staff turnover. As a result, newly hired employees were processing proposed assessments. Normally, administrative staff would scan incoming proposed assessments and forward them to the company's Vice President of Safety, who determines which citations to contest. However, in this instance, the new employees did not send the proposed assessment through the proper channels and penalties were not timely contested.

Ramaco discovered its failure, investigated the possible causes, provided further training for its employees, and then on August 7, 2023, it filed a motion to reopen. Ramaco did so without any notification from MSHA that payment was delinquent.[4] In most cases, the Secretary will send operators who fail to contest and pay the assessments a delinquency letter to inform them of the error. However, due to an apparent mistake, MSHA incorrectly recorded the final order date as July 10, 2023 and the delinquency letter was not mailed to the operator until August 25, 2023, weeks after the motion to reopen was filed.

Ramaco proved that it recognized and acted to correct its error prior to receipt of the first notice of delinquency. Just late last year, the Commission reaffirmed a long-established position regarding timely recognition of an error:

> The Commission has held that quick action after recognizing an error militates in favor of reopening. "Motions to reopen received within 30 days of an operator's 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).

Heidelberg Materials US Cement, LLC, 45 FMSHRC 1004, 1005 (Dec. 2023).

Undoubtedly, Ramaco discovering and attempting to remedy the error on its own initiative, prior to receiving a delinquency notice, compels a finding of good faith. *See, e.g.*, *Alleyton Res. Co.*, 46 FMSHRC ___ (May 17, 2024) (finding the proactive monitoring of citations and promptly moving to reopen upon discovery demonstrated good faith); *St. Marys*

[4] In her opposition, the Secretary provides a short summary of her records concerning the present case. Notably absent from the records is any mention of the Secretary notifying the operator of the delinquent penalties prior to the August 25th delinquency letter. Ramaco also does not indicate in its motion that MSHA notified it of the delinquent penalty, instead stating that the error was "discovered."

Cement, 45 FMSHRC 1008, 1009 (Dec. 2023); *Canyon Fuel Co., LLC*, 40 FMSHRC 1092, 1094 (July 2018).

Recognizing that Ramaco acted with promptness to notify MSHA and the Commission of its desire to contest citations, the majority rests its denial on the claim that Ramaco failed to provide sufficient explanation to justify reopening. However, it is unclear what more information *known to Ramaco* would have satisfied the majority's curiosity. The operator did not simply state that the failure to contest was the result of administrative error. Rather, Ramaco acknowledged that the failure to timely contest was due to a mistake forwarding the proposed assessment to the Vice President of Safety. Ramaco investigated the incident and identified that it was most likely the result of new administrative staff unfamiliar with the process. Any vagueness in the operator's explanation appears not to be for lack of trying but rather the inherent uncertainty in attempting to understand a past mistake.[5]

This case does not reflect poor internal processing or lack of expedition by Ramaco. It is a singular event caused by staff turnover. Moreover, it appears to be the quintessential type of mistake that Rule 60(b) was intended to address. Yet, the majority reviews Ramaco's quick action and finds no difficulty in refusing it the opportunity to contest penalties totaling a very high amount—a harsh remedy indeed.

Accordingly, I would find that Ramaco's failure to timely respond to the assessment was the result of mistake arising from a period of employee turnover, and grant Ramaco's motion to reopen.

William I. Althen

William I. Althen, Commissioner

[5] The majority relies on two cases to demonstrate that staff turnover is not a sufficient reason to justify reopening. In *Sun West Acquisition Corp.*, 45 FMSHRC 141 (Mar. 2023), the operator's motion was significantly less detailed that the present case. The motion was only three sentences long and only one of the sentences explained the failure to timely contest. In *Revelation Energy LLC*, 39 FMSHRC 1777 (Sept. 2017), the primary justification for denying relief was that the operator failed to respond to the Petition, the Order to Show Cause, and the delinquency notice for a significant amount of time, creating a "pattern of neglect." *Id*. at 1778. No such allegation exists here. Moreover, in *Revelation Energy*, the Commission admonished the operator for failure to explain how it was addressing the problem so that it would not reoccur. In the present case, Ramaco's Vice President of Safety stated in a sworn affidavit that, upon discovery of the error, all safety department employees received additional training on policy and procedures concerning proposed assessments.

Distribution:

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