

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, D.C. 20004-1710

JUN 18 2015

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

FOUR CORNERS MATERIALS

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Docket No. CENT 2014-46-M
A.C. No. 29-01258-179614

BEFORE: Jordan, Chairman; Young, Nakamura and Althen, Commissioners¹

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 November 14, 2013, the Commission received from Four Corners Materials (“Four Corners”) 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).

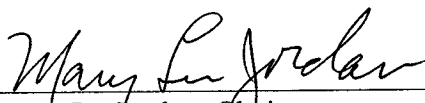
¹ Commissioner Cohen has elected not to participate in this matter.

Records of the Department of Labor's Mine Safety and Health Administration ("MSHA") indicate that the proposed assessment was delivered on March 24, 2009, and became a final order of the Commission on April 23, 2009. Four Corners asserts that it had timely filed a notice of contest to the proposed penalty assessment by mailing a notice of contest to MSHA. However, in August of 2009, the operator noticed that a final order had been issued in this matter, and at the same time realized that its contest to the proposed penalty assessment, sent on March 25, 2009, contained the wrong case number.

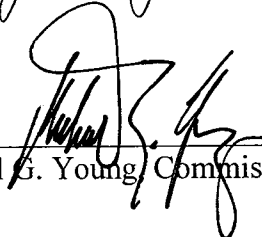
The Secretary opposes the request to reopen and notes that a delinquency notice was mailed to the operator on June 10, 2009, and that the case was referred to the U.S. Department of Treasury for collection on October 1, 2009. MSHA received payment through the U.S. Department of Treasury collection system on September 12, 2013.

Rule 60(c) of the Federal Rules of Civil Procedure provides that a Rule 60(b) motion shall be made within a reasonable time, and for reasons of mistake, inadvertence, or excusable neglect, not more than one year after the judgment, order, or proceeding was entered or taken. Fed. R. Civ. P. 60(c). This motion to reopen was filed more than four years after the operator received a delinquency notice informing it that the penalty assessment had become a final order. Therefore, under Rule 60(c), Four Corners' motion is untimely. *JS Sand & Gravel, Inc.*, 26 FMSHRC 795, 796 (Oct. 2004).


Accordingly, we deny Four Corners' motion with prejudice.



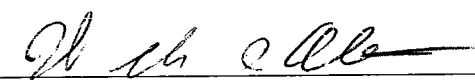
Mary Lu Jordan, Chairman



Michael G. Young, Commissioner



Patrick K. Nakamura, Commissioner



William I. Althen, Commissioner

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