

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N

WASHINGTON, DC 20004-1710

JUN 28 2016

SHANE HORTON

v.

COAL RIVER MINING, LLC,

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Docket No. WEVA 2013-1183-D
MSHA Case No.: HOPE-CD-2012-14

BEFORE: Jordan, Chairman; Young, Cohen, Nakamura, and Althen, 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 October 29, 2015, the Commission received from Shane Horton a motion seeking to reopen a discrimination proceeding and relieve him from the Default Order entered against him.

On June 10, 2015, Judge Zane Gill issued an Order to Show Cause in response to Horton’s perceived failure to communicate with the court or participate in settlement negotiations.¹ When Horton did not file a response within 30 days, the Judge entered an order of dismissal effective July 21, 2015.

Horton asserts that he did not receive the Order to Show Cause because the Judge used the wrong P.O. Box number on correspondence intended for him. Commission records show that Horton stated in his initial discrimination complaint to MSHA and his section 105(c)(3) complaint to the Commission that his address was P.O. Box 164, Danville, West Virginia. However, the Secretary’s discrimination determination letter was mailed to P.O. Box 803. The Judge appears to have adopted the latter address in all of his attempted correspondence with Horton.

Coal River Mining opposes Horton’s motion to reopen. The operator argues, *inter alia*, that Horton failed to demonstrate justifiable circumstances or good cause to excuse the

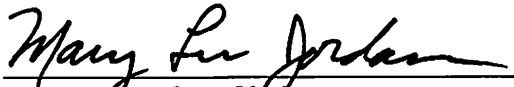
¹ Judge Gill was assigned this case on March 27, 2014. In his Order to Show Cause, he stated that “[w]e have no record of any communications or filings from Shane Horton since I was assigned this case in March 2014.” However, the record shows that Mr. Horton wrote a letter to Chief Judge Robert J. Lesnick on April 26, 2014. Mr. Horton had also written a lengthy letter to Judge Lesnick, with evidence attached, on March 10, 2014.

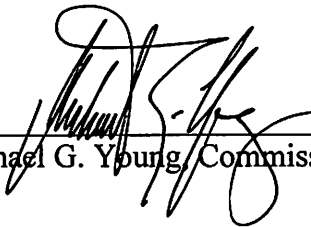
significant delay between the accident he alleges as the basis of his harassment and the filing of his original complaint to MSHA.

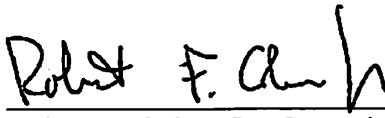
The Judge's jurisdiction in this matter terminated when the default occurred. 29 C.F.R. § 2700.69(b). Under the Mine Act and the Commission's procedural rules, relief from a judge's decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2)(A)(i); 29 C.F.R. § 2700.70(a). If the Commission does not direct review within 40 days of a decision's issuance, it becomes a final decision of the Commission. 30 U.S.C. § 823(d)(1). Consequently, the Judge's order here has become a final decision of the Commission.


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"); *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993). 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 will be permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

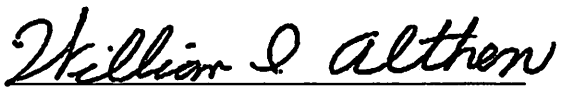
Having reviewed Horton's request and the operator's response, in the interest of justice, we hereby reopen the proceeding and vacate the Default Order. Accordingly, this case is remanded to the Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.


Mary Lu Jordan, Chairman


Michael G. Young, Commissioner


Robert F. Cohen Jr., Commissioner


Patrick K. Nakamura, Commissioner


William I. Althen, Commissioner

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