

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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WASHINGTON, D.C. 20004-1710

**June 29, 2023**

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. WEVA 2022-0467
	:	A.C. No. 46-06448-552209
	:	
v.	:	Docket No. WEVA 2022-0468
	:	A.C. No. 46-06618-552210
	:	
ROCKWELL MINING, LLC	:	Docket No. WEVA 2022-0469
	:	A.C. No. 46-09377-552216

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

ORDER

BY THE COMMISSION:

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”).<sup>1</sup> On July 18, 2022, the Commission received from Rockwell Mining, LLC motions seeking to reopen penalty assessments that had become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

Under section 105(a), 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

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<sup>1</sup> Rockwell filed similar motions to reopen relying upon the same reason as a basis for re-opening in three separate dockets. For the limited purpose of addressing the motions to reopen, we hereby consolidate docket numbers WEVA 2022-0467, WEVA 2022-0468, and WEVA 2022-0469, which involve similar procedural issues. See 29 C.F.R. § 2700.12.

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).

However, the Commission has also made clear that where a failure to contest a proposed assessment results from an inadequate or unreliable internal processing system, the operator has not established grounds for reopening the assessment. *Shelter Creek Capital, LLC*, 34 FMSHRC 3053, 3054 (Dec. 2012); *Oak Grove Res., LLC*, 33 FMSHRC 103, 104 (Feb. 2011); *Double Bonus Coal Co.*, 32 FMSHRC 1155, 1156 (Sept. 2010). In examining the operator's asserted justifications for reopening a particular case, the Commission has also explored whether the operator has demonstrated a pattern of behaviors that are attributable to inadequate or unreliable internal processing systems in other cases. *See Oak Grove Res., LLC*, 33 FMSHRC 2378, 2379-80 (Oct. 2011).

The Department of Labor's Mine Safety and Health Administration ("MSHA") indicates that the proposed assessments were delivered to the operator on April 8, 2022. The assessments became final orders of the Commission on May 9, 2022, and MSHA issued delinquency notices on June 23, 2022.

Rockwell states that it is unclear exactly when it received the proposed assessments, but notes that near the deadline to file the notices of contest, its Corporate Safety Director, who usually files notices of contest, left the company on April 22, 2022. It contends that the outgoing Director did not file the required notices of contest, nor did he notify any other employee of the impending deadline. When a paralegal for Rockwell learned of the oversight, the operator quickly retained counsel to file the required contests. The Secretary does not oppose the requests to reopen but urges the operator to take steps to ensure that future penalty contests are timely filed in accordance with MSHA's regulations at 30 C.F.R. § 100.7 and the Commission's procedural rules.

Having reviewed Rockwell's requests and the Secretary's responses, we find that due to mistake, inadvertence, or excusable neglect the penalty assessments were not timely contested. *See Noranda Alumina, LLC*, 39 FMSHRC 441, 445 (Mar. 2017) (when the safety director left the company unexpectedly, the failure to timely contest constituted an inadvertent mistake). Moreover, we note that Rockwell promptly filed its motions to reopen promptly upon notification that the penalties were delinquent.

Nonetheless, the Commission stresses that its decision that reopening was justified in this instance was a close call. In the last five years, Rockwell has requested reopening several times, citing a variety of justifications for their failure to timely contest penalties. *See e.g. Rockwell Mining, LLC*, 40 FMSHRC 1161 (Aug. 2018) (Rockwell alleged it mistakenly believed it had already responded to the penalty petition); *Rockwell Mining, LLC*, 40 FMSHRC 1155 (Aug. 2018) (Rockwell alleged that the penalty petition was sent to the wrong address); *Rockwell Mining, LLC*, 42 FMSHRC 796 (Oct. 2020) (Rockwell alleged that it failed to timely contest the assessments because the assessments were delivered while its safety manager was on vacation and was warned by the Commission that similar excuses would not be accepted in the future);

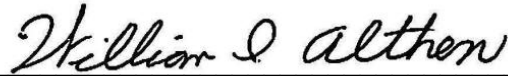
and *Rockwell Mining, LLC*, 45 FMSHRC \_\_\_, 2023 WL 2070349 (Feb. 10, 2023) (Rockwell alleged that a new office manager receptionist did not provide the proposed assessments to the safety director in a timely manner).

In each of those previous cases and in this instant matter, the Commission has found that Rockwell has demonstrated good cause for its failure to timely file to contest the proposed assessments. Nonetheless, we recognize that, cumulatively, these motions may indicate an inadequate or unreliable internal processing system. Rockwell must ensure that, in the future, it timely files to contest proposed assessments. The Commission will closely scrutinize any future motions to reopen filed by Rockwell for signs of an inadequate processing system. Any future request to reopen, which demonstrate that failure to timely file was due to an inadequate processing system and that fails to describe good faith measures to improve that system, will be denied.

In the interest of justice, we hereby reopen these matters and remand them 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 petitions for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.



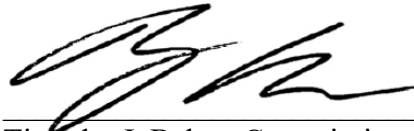
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