

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

July 10, 2024

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. WEVA 2023-0553
ADMINISTRATION (MSHA)	:	A.C. No. 46-08438-567590
	:	
v.	:	Docket No. WEVA 2023-0554
	:	A.C. No. 46-08438-575849
TAISHAN COAL, LLC	:	
	:	Docket No. WEVA 2023-0555
	:	A.C. No. 46-08438-577887

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

ORDER

BY: THE COMMISSION

These cases arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”).¹ On September 27, 2023, the Commission received from Taishan Coal, LLC (“Taishan”) a motion to reopen final orders of the Commission pursuant to section 105(a) of the 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

¹ The Commission consolidates these proceedings pursuant to Commission Procedural Rule 12, 29 C.F.R. § 2700.12, for the limited purpose of addressing the motion to reopen.

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).

According to the records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”), Docket No. WEVA 2023-0553 concerns 13 citations that were assessed a total proposed penalty of \$3,501. The assessment was delivered to Taishan on December 7, 2022, and became a final order on January 8, 2023. On February 21, 2023, MSHA sent the operator a delinquency notice. On September 21, 2023, MSHA received full payment for the penalties at issue.²

Docket No. WEVA 2023-0554 concerns 3 citations that were assessed a total proposed penalty of \$12,383. The assessment was delivered to Taishan on May 10, 2023, and became a final order on June 9, 2023. On July 25, 2023, MSHA sent Taishan a delinquency notice. Docket No. WEVA 2023-0555 concerns 2 orders that were assessed a total proposed penalty of \$62,738. The assessment was delivered to Taishan on May 30, 2023, and became a final order on June 29, 2023. On August 14, 2023, MSHA sent the operator a delinquency notice.

After failing to receive payment for the latter two cases, on October 20, 2023, MSHA issued a citation to Taishan alleging that the operator had failed to pay delinquent penalties. On November 1, 2023, MSHA received full payment.³

Prior to paying, Taishan first filed a motion to reopen. Taishan represents that it filed the motion after receiving a letter from MSHA related to its delinquent debts. Taishan states that it failed to timely file because it did not forward the assessments to its third-party safety consultant, Brent Prichard. Mr. Prichard submitted an affidavit stating that there were “miscommunications” regarding which penalties would be paid or contested. Mot at 1-2 (citing Ex. A). The Secretary opposes the operator’s motion, contending that it did not provide sufficient information to justify reopening and the filing of the motion was untimely.

When filing a motion to reopen before the Commission the operator bears the burden of showing exceptional circumstances. *Lone Mountain Processing, Inc.*, 35 FMSHRC 3342, 3345 (Nov. 2013). Relief under Rule 60(b) requires more than “general assertions or conclusory statements as to why an operator failed to timely contest.” *Sw. Rock Prods.*, 45 FMSHRC 747, 748 (Aug. 2023) (citing *Atlanta Sand & Supply Co.*, 30 FMSHRC 605, 608 (July 2008)). “At a minimum, the applicant for such relief 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 and for any delays in seeking relief once the operator became aware of the delinquency or failure. . . .” *Lone Mountain*, 35 FMSHRC at 3345 (citations omitted).

² The Secretary states that because the operator paid the penalties in Docket No. WEVA 2023-0553 its motion to reopen is moot for that case.

³ The Secretary represents that because the operator paid the penalties at issue in Docket Nos. WEVA 2023-0554 and WEVA 2023-0555 in response to the Secretary’s issuance of the citation, their motion is not moot for purposes of those two dockets.

We conclude that the operator has failed to sustain its burden of demonstrating exceptional circumstances with a detailed account of its failure to timely file. The bare assertion that it failed to forward assessments—in three separate cases—does not demonstrate good cause for a failure to timely file. *Sw Rock Prod., Inc.*, 45 FMSHRC at 748 (General assertions or conclusory statements are insufficient to justify relief from a final order before the Commission pursuant to Rule 60(b)) (citation omitted). Additionally, while the operator represents that it has made changes to its internal procedures to prevent the reoccurrence of the error, it neither explains what those procedures are or how the error will be corrected.⁴

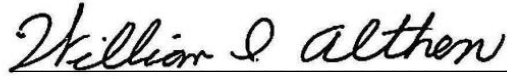
Furthermore, the operator makes no attempt to account for its delay in filing to reopen once it was notified of its delinquency. *See, e.g., Left Fork Mining Co.*, 31 FMSHRC 8, 11 (Jan. 2009); *Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009) (holding that motions to reopen filed more than 30 days after receipt of notice of delinquency must explain the reasons why the operator waited to file a reopening request, and lack of explanation is grounds for the Commission to deny the motion). Here, the operator delayed filing a motion for approximately

⁴ On August 1, 2023, Taishan filed a motion to reopen a separate case (Docket No. WEVA 2023-0461) before deciding to pay the penalties at issue and filing a motion to withdraw. Repetitive errors tend to demonstrate inadequate or unreliable procedures. 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. *See, e.g., 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).

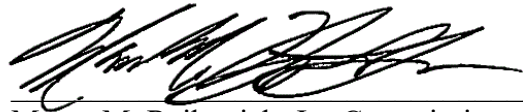
seven months, two months, and one month respectively after receiving notice of its delinquent status. Taishan provides no explanation to account for its delay. Based upon these reasons, Taishan's motion is DENIED with prejudice.



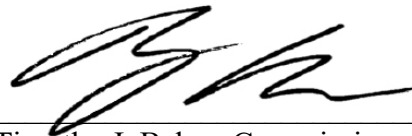
Mary Lu Jordan, Chair



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Marco M. Rajkovich, Jr., Commissioner



Timothy J. Baker, Commissioner



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