

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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July 11, 2023

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEST 2023-0012
v.	:	A.C. No. 04-04900-559854
	:	
EAGLE ROCK, INC.	:	

BEFORE: Jordan, Chair; Althen, Rajkovich, and Baker, 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. (2018) (“Mine Act”). On October 18, 2022, the Commission received from Eagle Rock, Inc. (“Eagle”) 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).


Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessment was delivered on August 8, 2022. On September 7, 2022, the proposed assessment became a final order of the Commission. On October 12, MSHA received a partial payment of the assessment for 10 of the 14 citations listed on the assessment.

Eagle asserts that it believed that its contest of the penalty assessment was due by September 9, 2022, two days after the assessment became a final order. The operator states that when it contacted MSHA’s Civil Penalty Compliance Office, it was advised that the contest was late, and that Eagle would receive correspondence regarding the untimeliness. On October 11, 2022, after having failed to receive the correspondence, Eagle again contacted MSHA and subsequently received the letter by email. On that same date, the operator paid 10 of the 14 proposed penalties listed on the proposed penalty assessment. The Secretary does not oppose the request to reopen but urges the operator to take steps to ensure that future penalty contests are timely filed.


Having reviewed Eagle’s request and the Secretary’s response, we find that the delay in filing the penalty contest was the result of mistake, satisfying the criteria of Rule 60(b). In the interest of justice, we hereby reopen the penalties associated with Citation Nos. 9507582, 9507586, 9507589, and 9507592 and remand this matter 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 a petition for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.



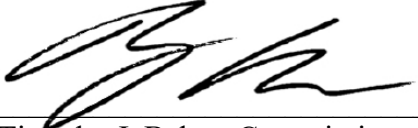
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William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner



Timothy J. Baker, Commissioner

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