

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710

JUL 16 2018

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
v. : Docket No. WEST 2018-0273-M
CANYON FUEL COMPANY, LLC : A.C. No. 42-01566-455974

BEFORE: Althen, Acting Chairman; Jordan, Young, and Cohen, 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 March 13, 2018, the Commission received a motion from Canyon Fuel Company, LLC (“Canyon Fuel”) 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 January 12, 2018, and became a final order of the Commission on February 12, 2018.¹


Canyon Fuel states that it did not receive the proposed assessment until March 13, 2018, when outside counsel contacted MSHA and requested a copy of the assessment form by email. Canyon Fuel states that MSHA claims that the assessment form was delivered, but that U.S. Postal Service (“USPS”) records indicated that the assessment was “left at/in the mailbox.” Canyon Fuel therefore contends that its failure to timely contest the penalty assessment was due to inadvertence or mistake in mail processing, either on the part of USPS (for failing to properly deliver mail which was presumably certified and therefore required a signature), or on the part of Canyon Fuel (for failing to sufficiently monitor mail processing).

The operator further explains that the delay may have been due in part to a mistaken belief that the assessment for the citation at issue would be included in the same contest form as another citation issued during the same inspection. On or about March 12, 2018, Canyon Fuel received the proposed assessment for the other citation and realized it did not address the citation at issue. Counsel for Canyon Fuel accessed MSHA’s Mine Data Retrieval System, discovered that the citation at issue was listed as a final order, requested a copy of the relevant proposed assessment from MSHA, and filed a motion to reopen on March 13, 2018.

The Secretary does not oppose the motion, although he urges greater care in ensuring future penalties are timely contested, and cautions that he may oppose future motions to reopen.

¹ The Secretary’s response to the motion says that this was the delivery date. However, MSHA has not provided a delivery confirmation receipt.

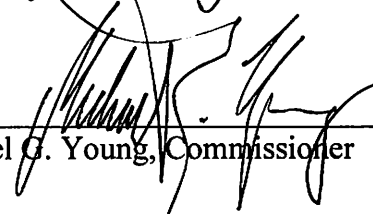
Having reviewed Canyon Fuel's request and the Secretary's response, we find that Canyon Fuel's failure to timely contest the assessment was the result of mistake or inadvertence resulting from confusion regarding the issuance of separate assessments for the two citations and, possibly, an error in mail delivery or processing. We also note that Canyon Fuel acted promptly and proactively to address the problem. In the interest of justice, we hereby reopen this matter and remand it 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.



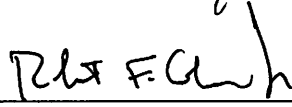
William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

Distribution:

Christopher Peterson, Esq.
Jackson Kelly PLLC
1099 18th St., Suite 2150
Denver, CO 80202

Ali Beydoun, Esq.
Office of the Solicitor
U.S. Department of Labor
201 12th St. South, Suite 500
Arlington, VA 22202-5450

Chief Administrative Law Judge Robert J. Lesnick
Federal Mine Safety & Health Review Commission
1331 Pennsylvania Ave. N.W., Suite 520N
Washington, DC 20004-1710

Melanie Garris
Office of Civil Penalty Compliance
Mine Safety and Health Administration
U.S. Department of Labor
201 12th St. South, Suite 500
Arlington, VA 22202-5450