

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, D.C. 20004-1710

July 18, 2023

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. WEVA 2022-0470
	:	A.C. No. 46-09297-552215
BLUE CREEK MINING, LLC	:	

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. (2012) (“Mine Act”). On July 18, 2022, the Commission received from Blue Creek Mining, LLC 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), 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).

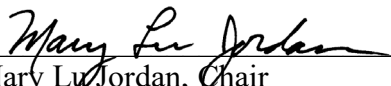
The Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicates that the proposed assessment was delivered to the operator on April 8, 2022. The assessment

became a final order of the Commission on May 9, 2022, and MSHA issued a delinquency notice on June 23, 2022.

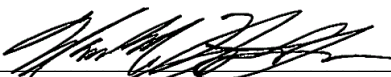
Blue Creek states that it is unclear exactly when it received the proposed assessment but notes that near the deadline to file the notice of contest in this case, its Corporate Safety Director, who usually files notices of contest, left the company on April 22, 2022. It contends that the outgoing Director did not file the required notice of contest, nor did he notify any other employee of the impending deadline. When a paralegal for Blue Creek learned of the oversight, the operator quickly retained counsel to file the required contest. Blue Creek has not filed any other motions to reopen with the Commission in the last two years.¹ 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 in accordance with MSHA's regulations at 30 C.F.R. § 100.7 and the Commission's procedural rules.

¹ Blue Creek's motion reflects that it relied on the same corporate personnel to file notices of contests of proposed civil penalties as Rockwell Mining, LLC, a separate subsidiary of Blackhawk Mining, LLC. On June 29, 2023, the Commission issued an Order noting that Rockwell's recent history of filing motions to reopen, if considered cumulatively, "may indicate an inadequate or unreliable internal processing system." *Rockwell Mining, LLC*, Order at 3. The Commission thus warned Rockwell that it "will closely scrutinize any future motions to reopen . . . for signs of an inadequate processing system." *Id.* Because the two subsidiaries rely on the same processes and personnel, Blue Creek is now also on notice.

Having reviewed Blue Creek's request and the Secretary's response, we find that due to mistake, inadvertence or excusable neglect the penalty assessment was 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 Blue Creek promptly filed its motion to reopen upon notification that the penalties were delinquent. 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.


Mary Lu Jordan, Chair


William I. Althen, Commissioner


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Timothy J. Baker, Commissioner

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