

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

July 26, 2024

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. WEST 2023-0363
ADMINISTRATION (MSHA)	:	A.C. No. 05-03836-579699
	:	
v.	:	
	:	
PEABODY TWENTYMILE MINING,	:	
LLC	:	

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

ORDER

BY THE COMMISSION:

This case arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On August 31, 2023, the Commission received from Peabody Twentymile Mining, LLC (“Peabody”) a motion to reopen a final order 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 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 to the operator on July 3, 2023, and became a final order of the Commission on August 2, 2023. Thereafter, MSHA received partial payment of the civil penalties. On September 19, 2023, MSHA sent the operator a delinquency notice. The operator then sent an additional payment in satisfaction of the total assessed penalties at issue in the assessment.

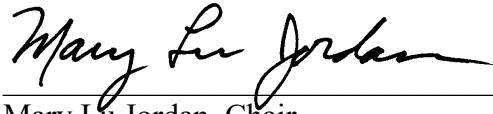
Peabody asserts that it intended to contest the civil penalties associated with Citation Nos. 9155573 and 9155217 but failed to timely file a contest because its Safety Manager, who reviews and processes proposed assessments and then forwards them to outside counsel for contesting, was out of the office due to an unexpected short-term disability. During the Safety Manager’s absence, the assessment was sent to an employee who was taking over compliance duties. That employee did not know that he was responsible for processing the assessment and had received no training regarding how to process the assessment. The operator’s counsel later discovered on MSHA’s Data Retrieval System that the proposed penalties had become final. The operator submits that the employee has been trained on procedures for handling assessments and will routinely forward all proposed assessments to outside counsel. Peabody states that it submitted payment for all of the proposed penalties on the assessment, except for the penalties associated with Citation Nos. 9155217 and 9155573. The Secretary does not oppose the operator’s motion to reopen.

Having reviewed Peabody’s request and the Secretary’s response, we find that Peabody has demonstrated that its failure to timely contest the proposed penalties for Citation Nos. 9155217 and 9155573 was due to a mistake. Although Peabody later sent an additional payment to MSHA,¹ it is not clear that the payment was intended as payment of the the proposed penalties associated with Citation Nos. 9155217 and 9155573.² In addition, Peabody filed its motion to reopen within 30 days of the proposed penalties becoming final orders and before MSHA sent the delinquency notice. *See Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009) (holding that motions to reopen received within 30 days of an operator’s receipt of its first notice from MSHA of its untimeliness “will be presumptively considered as having been filed within a reasonable amount of time”).

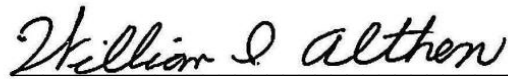
¹ We note that the remittance coupon submitted by both parties shows that the operator had an outstanding balance.

² Commissioner Baker has previously stated that it is his position that the accidental payment of a civil penalty does not constitute excusable neglect. *See e.g., Omya, Inc.*, 45 FMSHRC 131 (Mar. 2023). However, in light of the fact that the operator’s payment here may not have been directed towards the civil penalties at issue but instead towards an unrelated, outstanding balance, Commissioner Baker would determine that in the instant case payment was not the result of an inadequate or unreliable internal processing system.

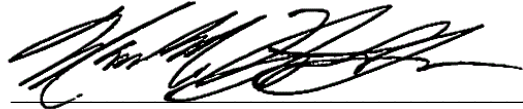
In the interest of justice, we hereby reopen the contest of this matter and remand it to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700. *See Sterling Materials*, 45 FMSHRC 467, 468 (June 2023) (reopening when operator failed to timely contest a penalty due to clerical error and paid the penalty). 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.



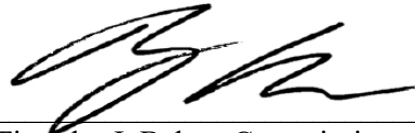
Mary Lu Jordan, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner



Timothy J. Baker, Commissioner



Moshe Z. Marvit, Commissioner

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