

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710

August 3, 2022

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH : Docket No. LAKE 2022-0071
ADMINISTRATION (MSHA) : A.C. No. 12-00038-541770
 :
v. : Docket No. LAKE 2022-0072
 : A.C. No. 12-00115-543456
NEW POINT STONE CO., INC. :

BEFORE: Traynor, Chair; Althen and Rajkovich, Commissioners

ORDER

BY THE COMMISSION:

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On January 13, 2022, the Commission received from New Point Stone Co., Inc. (“New Point”) 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). In addition, on January 14, 2022, the Commission received a second motion to reopen from the same operator.¹

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).

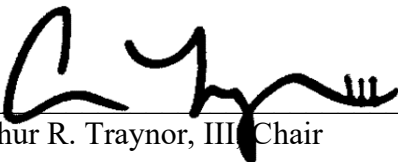
We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“*JWR*”). In evaluating requests to reopen final orders, the Commission 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


¹ For the limited purpose of addressing these motions to reopen, we hereby consolidate docket numbers LAKE 2022-0071 (involving the motion received on January 13, 2022) and LAKE 2022-0072 (involving the motion received on January 14, 2022) because they involve similar factual and procedural issues. 29 C.F.R. § 2700.12.


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).

Regarding LAKE 2022-0071, records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessment was delivered on September 17, 2021, and became a final order of the Commission on October 18, 2021. The Secretary also provides a copy of a delinquency notice issued to the operator on December 28, 2021. New Point asserts that, on approximately September 30, 2021, it mistakenly sent both its notice of contest and a partial penalty payment to the address for the payment of penalties, instead of correctly mailing the notice of contest to a separate address, as required by MSHA. Similarly, concerning LAKE 2022-0072, MSHA records indicate that the proposed assessment was delivered on October 6, 2021, and became a final order of the Commission on November 5, 2021, and the operator makes the same assertion that, on approximately October 30, 2021, it mistakenly sent its notice of contest to the wrong address. The Secretary does not oppose the requests to reopen, but urges the operator to take steps to ensure that future penalty contests are timely filed.

Having reviewed New Point’s requests and the Secretary’s responses, we find that the operator acted with excusable neglect in both matters by inadvertently mailing the notices of contest to the wrong address, despite doing so in a timely manner. In the interest of justice, we hereby reopen these matters and remand them 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 petitions for assessment of penalties within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.


Arthur R. Traynor, III, Chair


William I. Althen, Commissioner


Marco M. Rajkovich, Jr., Commissioner

Distribution (by email);

Kenneth Wanstrath, President
Harrison Sand & Gravel Co., Inc.
992 South County Road 800 East
Greensburg, IN 472408854
kenw@newpointstone.com

Emily Toler Scott, Esq.
Office of the Solicitor
U.S. Department of Labor
Division of Mine Safety and Health
201 12th Street South, Suite 401
Arlington, VA 22202
scott.emily.t@dol.gov

April Nelson, Esq.
Associate Solicitor
Office of the Solicitor
U.S. Department of Labor
Division of Mine Safety and Health
201 12th Street South, Suite 401
Arlington, VA 22202
Nelson.April@dol.gov

Melanie Garris, Chief
Office of Civil Penalty Compliance
U.S. Department of Labor
Office of Assessments
Mine Safety and Health Administration
201 12th Street South, Suite 401
Arlington, VA 22202
Garris.Melanie@dol.gov

Chief Administrative Law Judge Glynn Voisin
Federal Mine Safety & Health Review Commission
1331 Pennsylvania Avenue, NW, Suite 520 N
Washington, DC 20004-1710
GVoisin@fmshrc.gov