

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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AUG 07 2017

SECRETARY OF LABOR,	:	Docket No. WEVA 2016-103
MINE SAFETY AND HEALTH	:	A.C. No. 46-09172-388781
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEVA 2016-104
v.	:	A.C. No. 46-09172-394014
	:	
GREENBRIER MINERALS, LLC	:	Docket No. WEVA 2016-105
	:	A.C. No. 46-09154-391339

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 November 19, 2015, the Commission received from Greenbrier Minerals, LLC (“Greenbrier”) a motion seeking to reopen three penalty assessments that had become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).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 observed that default is a harsh remedy and that, if the defaulting party can make a showing of

¹ For the limited purpose of addressing these motions to reopen, we hereby consolidate docket numbers WEVA 2016-103, WEVA 2016-104, and WEVA 2016-105 involving similar procedural issues. 29 C.F.R. § 2700.12.

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).

Greenbrier asserts that it timely contested the three penalty assessments at issue here, but the contest forms were mailed to an older address for the Department of Labor’s Mine Safety and Health Administration (“MSHA”). After learning that MSHA apparently had not received the contest form for Assessment No. 000388781, Greenbrier preemptively requested the Commission reopen all three assessments and provided records showing that the operator had timely contested the assessments at issue.

MSHA’s records indicate that Assessments Nos. 000388781 (WEVA 2016-103) and 000394014 (WEVA 2016-104) were timely contested. However, MSHA has no record of receiving a contest of Assessment No. 000391339 (WEVA 2016-105).

We note that on July 15, 2015, MSHA moved its headquarters, and that in the subsequent months, mail sent to MSHA’s old address was often not forwarded to its new location. *See Allstate Materials, LLC, et al.*, 38 FMSHRC 645, 646 (Apr. 2016). When mail was forwarded to MSHA’s new headquarters, it often arrived so late that MSHA was already acting under the presumption that the proposed penalties had become final orders of the Commission. *Blue Diamond Coal Co., et al.*, 38 FMSHRC 640 (Apr. 2016).

The record indicates that, in the three months following the move of MSHA’s headquarters, Greenbrier filed timely contests in the three above-captioned cases. However, these contests were all mailed to MSHA’s former address. The contests for Assessment Nos. 000388781 and 000394014 appear to have eventually been forwarded to MSHA’s new location.² As these cases were not final orders of the Commission at the time the motion to reopen was filed, the motion to reopen Docket Nos. WEVA 2016-103 and WEVA 2016-104 is moot.

The proposed assessment in WEVA 2016-105 was delivered on September 14, 2015, and became a final order of the Commission on October 14, 2015 when it appeared that the operator had not filed a timely contest. Greenbrier, however, provided the Commission with a copy of a letter dated September 22, 2015, which purports to demonstrate that it timely mailed its contest to MSHA headquarters’ old address. The Secretary does not oppose the request to reopen.

Having reviewed Greenbrier’s request and the Secretary’s response, we find that Greenbrier’s failure to timely contest WEVA 2016-105 was the result of it mistakenly mailing its contests to MSHA’s old address. While Greenbrier should have mailed its contests to the address provided by MSHA in its contest instructions, we find Greenbrier’s mistake excusable in light of the fact that its prior contests had been successfully forwarded to MSHA and deemed timely filed. Accordingly, in the interest of justice, we hereby reopen WEVA 2016-105 and remand it to the Chief Administrative Law Judge for further proceedings pursuant to the Mine

² Assessment No. 00388781 was docketed as WEVA 2016-92 and was disposed on July 22, 2016, after the parties reached a settlement. Assessment No. 000394014 was docketed as WEVA 2016-109 and WEVA 2016-110. On September 28, 2016, these cases were also disposed after the parties reached a settlement.

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

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