## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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August 13, 2024

SECRETARY OF LABOR,

MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)

Docket No. WEST 2023-0333

V.

A.C. No. 10-01658-574025

DEATLEY CRUSHING COMPANY

:

BEFORE: Jordan, Chair; Althen, Rajkovich, Baker, and Marvit, 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. (2018) ("Mine Act"). On July 26, 2023, the Commission received from DeAtley Crushing Company ("DeAtley") 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) 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 April 10, 2023, and became a

final order of the Commission on May 10, 2023. On June 27, 2023, a delinquency notice was mailed to the operator.

DeAtley claims that on April 11, 2023, the day after receiving the assessment, it timely mailed a contest of the proposed assessment via the U.S. Postal Service's regular mail. The operator contacted MSHA upon receiving the delinquency letter, but MSHA could not find any record of the contest being filed. The operator believes that an error by the postal service resulted in the contest not being delivered to MSHA. As the contest was not sent via certified mail, the operator is unable to provide documentation of the date the contest was mailed. The Secretary of Labor does not oppose the request to reopen. The Secretary explicitly notes that DeAtley has a well-established history of filing contests in a timely manner.<sup>1</sup>

Having reviewed DeAtley's request and the Secretary's response, we find that DeAtley acted in good faith. DeAtley also has a history of filing contests in a timely manner.

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

Marco M. Rajkovich, Jr., Commissioner

Timothy J. Baker, Commissioner

Moshe Z. Marvit, Commissioner

<sup>&</sup>lt;sup>1</sup> The Secretary does not claim that DeAtley mailed this assessment or any prior assessment to an incorrect address.

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