

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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August 18, 2023

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. CENT 2022-0219
v.	:	A.C. No. 41-00071-551832
	:	
THYSSENKRUPP	:	
INDUSTRIAL SOLUTIONS	:	

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. (2018) (“Mine Act”). On August 18, 2022, the Commission received from Thyssenkrupp Industrial Solutions (“Thyssenkrupp”) 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). The Commission issued an order requesting further information from the operator, which Thyssenkrupp timely responded to on August 9, 2023.

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).

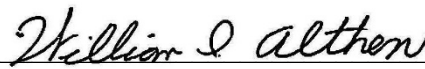
Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessment was delivered on April 1, 2022, and became a final order of the Commission on May 2, 2022. Thyssenkrupp mailed its notice of contest on May 23, 2022. Thyssenkrupp asserts that it delayed because it was waiting for the MSHA District Office to provide a copy of one of the citations that was missing from the assessment package. Thyssenkrupp eventually mailed the notice of contest rather than continuing to wait, but due to the delay, the filing was untimely. Thyssenkrupp eventually received a copy of the missing citation on June 30, 2022. 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.

Having reviewed Thyssenkrupp’s request and the Secretary’s response, we find that Thyssenkrupp’s approximately three-week delay in filing while waiting for paperwork was excusable. We note that the operator showed a good faith desire to contest the assessment by ultimately choosing to file its notice of contest rather than continuing to wait. 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 L. Baker, Commissioner

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