

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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August 20, 2018

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),

v.

DURACAP MATERIALS LLC

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Docket No. SE 2018-95-M
A.C. No. 40-03343-442373

BEFORE: Althen, Acting Chairman; Jordan, and Young, Commissioners¹

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 February 20, 2018, the Commission received from Duracap Materials LLC (“Duracap”) a motion seeking to reopen a penalty assessment that had appeared to become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

On July 5, 2017, Duracap received a proposed penalty assessment from the Secretary. On August 4, 2017, the proposed assessment was deemed a final order of the Commission, when it appeared that the operator had not filed a Notice of Contest within 30 days. MSHA mailed a delinquency notification to the operator on October 14, 2017, and the case was referred to the U.S. Department of Treasury for collection on December 14, 2017.


The operator claims that it timely mailed a contest to MSHA. As evidence of the timely contest, the operator provides a certified mail receipt. Records from the US Postal Service indicate that the contest was received at the post office in Arlington, Virginia, but was never delivered to the Secretary. The Secretary does not oppose the request to reopen. Significantly, the Secretary does not dispute that the contest was received by MSHA on July 13, 2017, before it purportedly became a final order of the Commission.

Section 105(a) states that if an operator “fails to notify the Secretary that he intends to contest the . . . proposed assessment of penalty . . . the citation and the proposed assessment of penalty shall be deemed a final order of the Commission.” 30 U.S.C. § 815(a). Here, the evidence indicates that Duracap timely notified the Secretary of the contest.


¹ Commissioner Cohen has elected not to participate in this matter.

Therefore, having reviewed Duracap's request and the Secretary's response, we conclude that the proposed penalty assessment did not become a final order of the Commission because the operator timely contested the proposed assessment. This obviates any need to invoke Rule 60(b).

Accordingly, the operator's motion to reopen is moot, and this case is remanded 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.



William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner

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