

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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WASHINGTON, DC 20004-1710

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

v.

BEELMAN TRUCK CO.

AUG 1 2018

AUG 21 2018

: Docket No. SE 2018-84-M  
: A.C. No. 01-00040-448729

BEFORE: Althen, Acting Chairman; Jordan, and Young, Commissioners<sup>1</sup>

**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 7, 2018, the Commission received from Beelman Truck Co. (“Beelman”) 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 September 23, 2017, the U.S. Postal Service attempted to deliver a proposed penalty assessment from the Secretary to the operator. However, the assessment was returned unclaimed. On October 23, 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. Subsequently, a delinquency notification was mailed to the operator on December 11, 2017.

The operator claims that it filed a timely contest for a citation underlying the proposed assessment but claims that it never received the assessment itself. The Secretary does not oppose the request to reopen. Significantly, the Secretary concedes that the assessment was returned unclaimed and does not argue that the operator refused to accept delivery of the assessment.


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 Beelman never received the assessment and thus, did not have an opportunity to notify the Secretary that it intended to contest the assessment.

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<sup>1</sup> Commissioner Cohen has elected not to participate in this matter.

Having reviewed Beelman'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 never received the 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.

  
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William I. Althen, Acting Chairman

  
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Mary Lu Jordan, Commissioner

  
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Michael G. Young, Commissioner

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