

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710

August 21, 2023

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. WEVA 2023-0197
ADMINISTRATION (MSHA)	:	A.C. No. 46-09377-566429
	:	
v.	:	Docket No. WEVA 2023-0198
	:	A.C. No. 46-09427-566430
ROCKWELL MINING, LLC	:	

BEFORE: Jordan, Chair; Althen, Rajkovich, and Baker, Commissioners

ORDER

BY THE COMMISSION:

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On February 22, 2023, the Commission received from Rockwell Mining, LLC (“Rockwell”) two motions seeking to reopen 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 2023-0197 and WEVA 2023-0198 because they involve similar factual and 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).

Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate the proposed assessments were delivered to the operator via U.S. Postal Service on November 16, 2022. On December 16, 2022, the proposed assessments were deemed final orders of the Commission because the operator had not filed Notices of Contest within 30 days. On January 31, 2023, MSHA mailed delinquency notices to the operator.

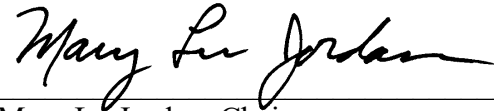
Rockwell asserts that it learned of the assessments on February 6, 2023, during an inquiry into its penalty balance. At that time, MSHA informed Rockwell that the assessments had been delivered on November 16, 2022 and that the signature block on the delivery confirmation read “C COVID.” Rockwell claims no employee received the assessments on November 16, 2022. The exact method of delivery confirmation is unclear. The Secretary of Labor does not oppose the request to reopen.

We note that the motion to reopen was timely filed. The Commission has previously held that “[m]otions to reopen received within 30 days of an operator’s receipt of its first notice from MSHA that it has failed to timely file a notice of contest will be presumptively considered as having been filed within a reasonable amount of time.” *Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009). Here, the motion to reopen was filed on February 22, 2023, approximately two weeks after the conversation with MSHA and approximately three weeks after the delinquency notices were received. Therefore, the motion was filed within a reasonable amount of time.

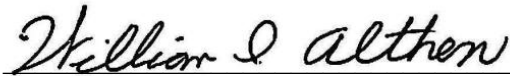
Having reviewed Rockwell’s requests and the Secretary’s responses, we find that the operator has demonstrated good cause for its failure to timely respond and acted in good faith by timely filing its request to reopen.² We also note the use of “C COVID” in the signature block, and recognize that mail delivery was affected by the unprecedented strain of the COVID-19 pandemic during the relevant timeframe. In the interest of justice, we hereby reopen these matters and remand them 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.

² In a June 29, 2023 Order in Docket No. WEVA 2022-0467 et al., Rockwell was put on notice that any future motions to reopen would be closely scrutinized for signs of an inadequate internal processing system. This motion was filed prior to that notice. Furthermore, the record does not indicate whether the mistake in this instance was with the U.S. Postal Service’s delivery and confirmation process, Rockwell’s receipt process, or simply a fluke. Nevertheless, we reiterate that any future requests to reopen which indicate a failure of Rockwell’s internal processing system and fail to describe good faith measures to improve that system may be denied.

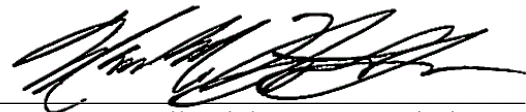
Accordingly, consistent with Rule 28, the Secretary shall file a petition for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.



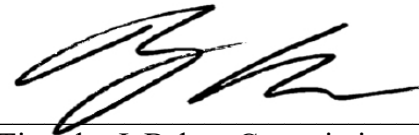
Mary Lu Jordan, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner



Timothy J. Baker, Commissioner

Distribution:

Justin K. Chandler, Esq.
Steptoe & Johnson PLLC
707 Virginia Street East, 17th Floor
PO Box 1588
Charleston, WV 25326-1588
Justin.chandler@steptoe-johnson.com

Jonathan R. Ellis, Esq.
Steptoe & Johnson PLLC
707 Virginia Street East, 17th Floor
PO Box 1588
Charleston, WV 25326-1588
Jonathan.ellis@steptoe-johnson.com

April Nelson, Esq.
Associate Solicitor
Office of the Solicitor
U.S. Department of Labor
Division of Mine Safety and Health
201 12th Street South, Suite 401
Arlington, VA 22202
Nelson.April@dol.gov

Emily Toler Scott, Esq.
Counsel for Appellate Litigation
Office of the Solicitor
U.S. Department of Labor
Division of Mine Safety and Health
201 12th Street South, Suite 401
Arlington, VA 22202
scott.emily.t@dol.gov

Melanie Garris
USDOL/MSHA, OAASEI/CPCO
201 12th Street South, Suite 401
Arlington, VA 22202
Garris.Melanie@DOL.GOV

Chief Administrative Law Judge Glynn F. Voisin
Office of the Chief Administrative Law Judge
Federal Mine Safety Health Review Commission
1331 Pennsylvania Avenue, NW Suite 520N
Washington, DC 20004-1710
GVoisin@fmshrc.gov