

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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WASHINGTON, DC 20004-1710

August 22, 2022

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. LAKE 2022-0015
	:	A.C. No. 11-02664-536307
v.	:	
	:	Docket No. LAKE 2022-0016
ICG ILLNOIS LLC	:	A.C. No. 11-02664-538189

BEFORE: Traynor, Chair; Althen and Rajkovich, Commissioners

**ORDER**

BY THE COMMISSION:

These matters arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On October 20, 2021, the Commission received from ICG Illinois LLC (“ICG”) a motion seeking to reopen two 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).<sup>1</sup>

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

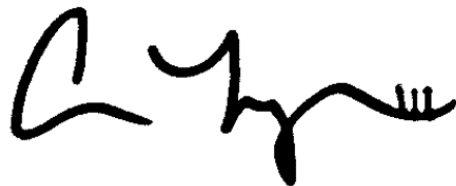
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<sup>1</sup> For the limited purpose of addressing these motions to reopen, we hereby consolidate docket numbers LAKE 2022-0015 and LAKE 2022-0016 because they involve similar factual and procedural issues. 29 C.F.R. § 2700.12.

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).

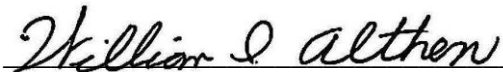
Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessments were delivered on June 18, 2021 and July 23, 2021, and became final orders of the Commission on July 19, 2021 and August 23, 2021, respectively. ICG asserts that notice of its intention to contest the citations was mistakenly sent to MSHA’s lock box address in St. Louis, along with ICG’s payment for the uncontested citations. The contest notice should have been separately sent to MSHA’s Arlington, Virginia office. 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 ICG’s request and the Secretary’s response, we find that after a delinquency notice was sent by MSHA, ICG acted promptly to determine the reason for such notice. The operator made three calls to MSHA, the final one occurring on October 6, 2021. After MSHA called back on October 7, 2021, and provided the operator with information regarding where to file a Motion to Reopen, the Commission received ICG’s Motions 13 days later. 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. Accordingly, consistent with Rule 28, the Secretary shall file petitions for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.



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Arthur R. Traynor, III, Chair



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William I. Althen, Commissioner



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Marco M. Rajkovich, Jr., Commissioner

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