

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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August 22, 2022

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. LAKE 2022-0098
ADMINISTRATION (MSHA)	:	A.C. No. 20-00051-545546
	:	
v.	:	
	:	
LAFARGE HOLCIM	:	

BEFORE: Traynor, Chair; Althen and Rajkovich, 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 March 7, 2022, LaFarge Holcim filed a motion 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).

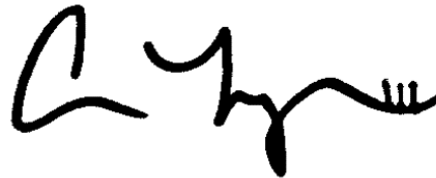
Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of 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).

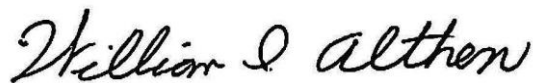
The Secretary of Labor states that the records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that a proposed assessment was sent to the operator on November 17, 2021, and was delivered on December 3, 2021, via U.S. Postal Service Mail. The Secretary received payment for one of the two citations at issue on December 14, 2021. The Secretary asserts that the proposed assessment became a final order of the Commission on January 2, 2022, 30 days after its delivery.

LaFarge Holcim maintains that it timely filed to contest Citation No. 9622263 at the time it submitted payment for the second citation at issue. The operator states that it became aware of the outstanding balance for Citation No. 9622263 on January 27, 2022, and thereafter sought to reopen the final order.

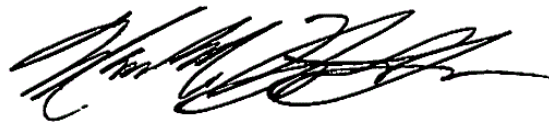
Having reviewed LaFarge Holcim’s request and the Secretary’s response, we find that the operator attempted to timely file to contest Citation No. 9622263 and MSHA’s non-receipt was either inadvertent or the result of a mistake. We hereby reopen this matter, and remand the case to the Chief Administrative 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.



Arthur R. Traynor, III, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner

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