

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

August 22, 2022

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. WEVA 2020-0476
ADMINISTRATION (MSHA)	:	A.C. No. 46-03085-510824
	:	
v.	:	
	:	
KANAWHA EAGLE MINING, LLC	:	

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 July 20, 2020, Kanawha Eagle Mining, LLC, 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).

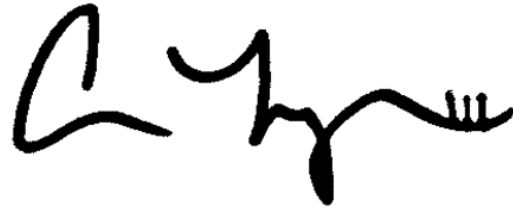
Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of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

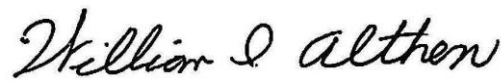
The Secretary of Labor states that the records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that a proposed assessment was sent to the operator on March 17, 2020, and was delivered on April 15, 2020, via U.S. Postal Service Mail. The Secretary asserts that the proposed assessment became a final order of the Commission on May 15, 2020, 30 days after its delivery. The Secretary sent the operator a delinquency notice on June 30, 2020.

Kanawha Eagle asserts that it failed to timely contest the penalties at issue due to a mistake. Specifically, its safety director attests that he mistakenly checked a box to contest one citation (\$123 penalty) on the assessment; he instead intended to check the box located just below which would have indicated the operator’s intent to contest all the penalties at issue (\$17,385). The safety director maintains that he timely mailed the notice of contest on April 17, 2020. The Secretary does not oppose the operator’s request to reopen.

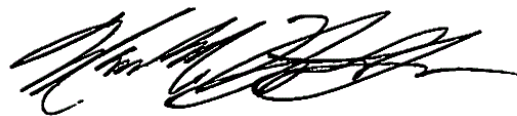
Having reviewed Kanawha Eagle’s request and the Secretary’s response, we find that the operator failed to timely contest all the penalties at issue due to a mistake. We hereby reopen this matter, and remand the case to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act 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

Distribution:

Emily Toler-Scott, Esq.
Office of the Solicitor
U.S. Department of Labor
201 12th St. South, Suite 401
Arlington, VA 22202-5450
Scott.Emily.T@dol.gov

April Nelson, Esq.
Associate Solicitor,
Office of the Solicitor
U.S. Department of Labor
201 12th St. South, Suite 401
Arlington, VA 22202-5450
Nelson.April@dol.gov

Chief Administrative Law Judge Glynn Voisin
Federal Mine Safety & Health Review Commission
1331 Pennsylvania Ave. N.W., Suite 520N
Washington, DC 20004-1710
GVoisin@fmshrc.gov

Melanie Garris
Office of Civil Penalty Compliance
Mine Safety and Health Administration
U.S. Department of Labor
201 12th St. South, Suite 401
Arlington, VA 22202-5450
Garris.Melanie@dol.gov

Jonathan R. Ellis, Esq.
Colton C. Parsons, Esq.
707 Virginia Street, East, Seventeenth Floor
P.O. Box 1588
Charleston, WV 25326
Jonathan.Ellis@steptoe-johnson.com
Colton.Parsons@steptoe-johnson.com