

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

August 24, 2022

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. CENT 2022-0145
ADMINISTRATION (MSHA)	:	A.C. No. 23-02513-548052
	:	
v.	:	
	:	
LIBERTY AGGREGATES 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 May 4, 2022, Liberty Aggregates, 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).

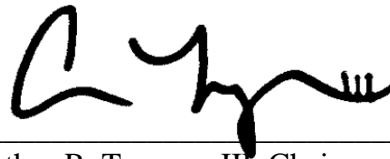
Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of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

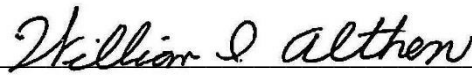
The Secretary of Labor states that records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that a proposed assessment was sent to the operator on January 4, 2022, and was delivered on January 18, 2022. The Secretary asserts that the assessment became a final order on February 17, 2022, 30 days after its delivery. On March 4, 2022, MSHA received partial payment toward one of the four citations at issue in the assessment. On April 5, 2022, MSHA sent the operator a delinquency notice for the remaining amount.

Liberty Aggregates states that during January and February 2022, it made multiple attempts to contact the local MSHA field office and the MSHA national office to understand the basis for the large penalty assessment. On March 24, 2022, it discovered that the subject citations were listed as delinquent on MSHA’s website. Shortly thereafter, the operator contacted counsel and filed the subject motion to reopen. Liberty Aggregates asserts that its failure to timely contest the penalty assessment was inadvertent. The Secretary does not oppose the motion to reopen.

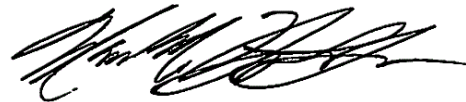
Having reviewed Liberty Aggregate’s request and the Secretary’s response, we find the operator’s failure to timely contest the proposed assessment was inadvertent. We hereby reopen this matter, and remand the case to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act 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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