

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N
WASHINGTON, DC 20004-1710

AUG 27 2015

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

RPC CONTRACTING, INC.

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: Docket No. SE 2014-118-M
: A.C. No. 31-02100-337389
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BEFORE: Jordan, Chairman; Young, Cohen, Nakamura, and Althen, 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. (2012) (“Mine Act”). On January 13, 2014, the Commission received from RPC Contracting, Inc. (“RPC”) a motion seeking 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).

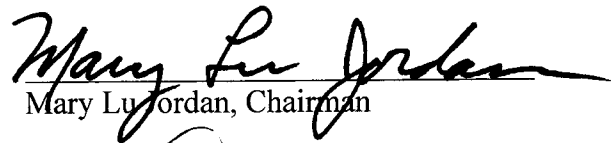
Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a).

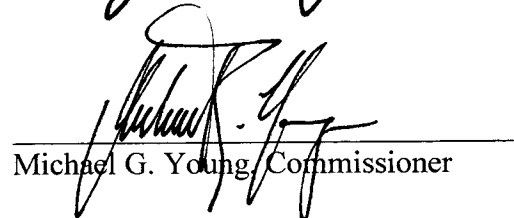
We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“*JWR*”). In evaluating requests to reopen final orders, the Commission 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).

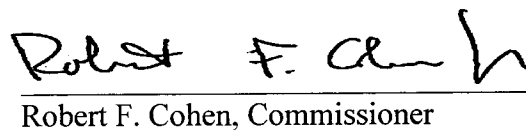
Records of the Department of Labor's Mine Safety and Health Administration ("MSHA") indicate that the proposed assessment was delivered on December 5, 2013, and became a final order of the Commission on January 6, 2014. RPC asserts that its Chief Financial Officer, who handles RPC's MSHA matters, was out of the office from November 27 through December 30, 2013 due to medical leave, and that the CFO returned to the office on December 31, 2013 and forwarded the documents to counsel. The operator further asserts that counsel was on holiday leave and had left town to attend a family funeral, and was therefore unaware of the assessment until January 13, 2013.

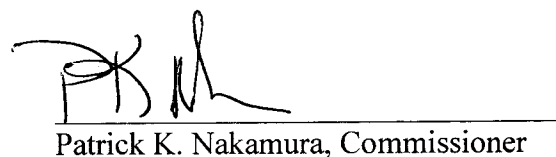
The Secretary does not oppose the request to reopen, however he notes that the operator should have made sure that its counsel was aware of the receipt of the contest form and the limited time to contest it. The Secretary asserts that counsel has always been aware of the time-sensitive contest rules of the Mine Act and should have had coverage at the office when counsel was unable to be there. The Secretary notes that its reason for not opposing the motion to reopen is mainly because the operator requested it before receiving a delinquency notice. The Secretary urges RPC to take steps to ensure that future penalty contests are timely filed.

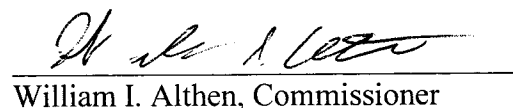
Having reviewed RPC's request and the Secretary's response, in the interest of justice, we hereby reopen this matter and remand it to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700. Accordingly, consistent 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.


Mary Lu Jordan, Chairman


Michael G. Young, Commissioner


Robert F. Cohen, Commissioner


Patrick K. Nakamura, Commissioner


William I. Althen, Commissioner

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