

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

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

AUG 30 2018

v.

THOMAS L. PUCKETT, employed by
FRASURE CREEK MINING, LLC

Docket No. WEVA 2015-932
A.C. No. 46-09105-387887A

BEFORE: Althen, Acting Chairman; Jordan, Young, and Cohen, 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 March 26, 2018, the Commission received a motion seeking to reopen this civil penalty case involving Thomas Puckett under section 110(c) of the Mine Act, 30 U.S.C. § 820(c). Puckett is concerned because, although he timely contested a proposed assessment sent to him by the Department of Labor’s Mine Safety and Health Administration (“MSHA”) in 2015, and although the proposed assessment was not further processed by MSHA, he received a letter from MSHA dated March 9, 2018 informing him that the civil penalty had become delinquent and he owed the government over \$8000.

MSHA records indicate that the proposed assessment was delivered on July 28, 2015, and contested by Puckett on or about August 10, 2015.

On November 21, 2017, the Chief Administrative Law Judge issued an Order requiring the Secretary to show cause as to why a petition for assessment of penalty had not been filed within 45 days of Puckett’s timely contest, as required by the Commission’s Procedural Rules. The Secretary failed to timely file a penalty petition or to otherwise respond to the Show Cause Order. Accordingly, pursuant to the terms of the Order, the proceeding against Puckett was dismissed on December 22, 2017. *See* 29 C.F.R. §§ 2700.28(a), 2700.66(a).

In his motion, Puckett asserts that the proposed assessment was timely contested in August 2015. He further states he did not receive any further documents from MSHA until March 2018, when the Secretary issued a letter stating that the assessment had become a final order and that he was delinquent in paying the assessed penalty.


The Secretary does not oppose the motion to reopen. According to the Secretary, MSHA's records indicate that the case was "in contest" on August 10, 2015, but was "closed by default on January 3, 2018." The Secretary contends that the assessment became a final order on February 1, 2018. Presumably relying on these records, the Secretary mailed a delinquency notice to Puckett on March 9, 2018.

MSHA's records and the Secretary's response to the motion before us do not accurately describe the status of this case. The Chief Administrative Law Judge dismissed this matter because of the Secretary's failure to file a civil penalty petition. There was no failure to act by Puckett. Accordingly, the Secretary's proposed penalty assessment did not become a final order.

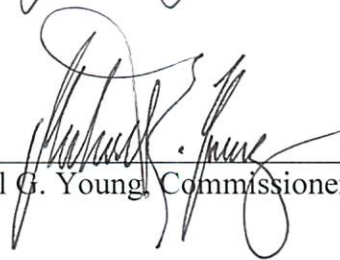
Because this matter was dismissed as a result of the Secretary's failure to prosecute, Puckett does not owe anything to the government. Accordingly, reopening this matter is unnecessary.



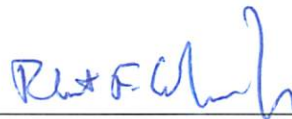
William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

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