

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

AUG 31 2018

v.

ROCKWELL MINING, LLC

Docket No. WEVA 2018-30  
A.C. No. 46-06618-449006

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 27, 2018, the Commission received from Rockwell Mining, LLC (“Rockwell”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On December 4, 2017, the Chief Administrative Law Judge issued an Order to Show Cause in response to Rockwell’s failure to answer the Secretary of Labor’s October 17, 2017, Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause became a Default Order on January 3, 2018, once Rockwell failed to file an answer to the penalty petition within 30 days. The Default Order has since become a final decision of the Commission. 30 U.S.C. § 823(d)(1).

In evaluating requests to reopen, 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”); *Jim Walter Res., Inc.*, 15 FMSHRC 782, 787 (May 1993). 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 two alleged violations at issue in this matter are also at issue in a related proceeding (Docket No. WEVA 2017-425) brought against an agent of Rockwell under section 110(c) of the Mine Act, 30 U.S.C. § 820(c). Rockwell asserts that it mistakenly believed it had responded to the penalty petition in this matter, because the parties had already begun litigating the related

docket when the penalty petition for this proceeding was received. Rockwell states that once it realized in February 2018 it had not filed an answer in this proceeding, it immediately did so.<sup>1</sup> Rockwell further asserts that it has no record of receiving a copy of the Show Cause Order.


The Secretary does not oppose the request to reopen. The Secretary further represents that he has moved to vacate the citation and order in question and dismiss the proceeding in the related docket.<sup>2</sup> Accordingly, the Secretary requests that the instant case be reopened, so that MSHA may also move to dismiss this proceeding.

Having reviewed Rockwell's request and the Secretary's response, we hereby reopen the proceeding, vacate the default order, and remand to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 CFR Part 2700. Given that an answer has already been filed and the Secretary has elected to vacate the violations in the related docket, we expect a prompt resolution to this proceeding.



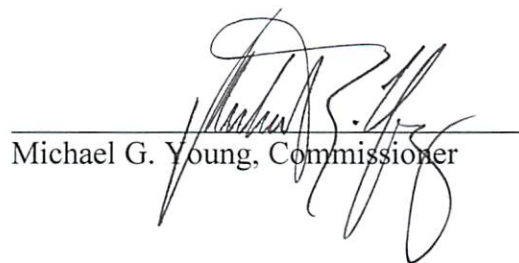
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William I. Althen, Acting Chairman



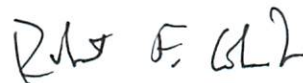
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Mary Lu Jordan, Commissioner



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Michael G. Young, Commissioner



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Robert F. Cohen, Jr., Commissioner

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<sup>1</sup> The answer was received by the Commission on February 7, 2018.

<sup>2</sup> Because the Secretary elected to vacate the civil penalty proceeding against Rockwell's agent, the Judge in that case issued an Order of Dismissal for WEVA 2017-425 on April 5, 2018.

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