

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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September 5, 2024

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEST 2023-0351
v.	:	A.C. No. 48-00152-573340
	:	
RAM ENTERPRISE, INC.	:	

BEFORE: Jordan, Chair; Baker, and Marvit, 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 August 15, 2023, the Commission received from Ram Enterprise, Inc. (“Ram Enterprise”) a motion seeking to reopen a penalty assessment that had appeared to become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

In March of 2023, Ram Enterprise received a proposed penalty assessment from the Secretary. On April 26, 2023, the Secretary deemed the proposed assessment a final order of the Commission, when it appeared that the operator had not filed a Notice of Contest within 30 days.

Ram Enterprise seeks to reopen three citations, 9725542, 9725543 and 9725545, asserting that it had timely contested the citations in the proposed assessment.

In June 2023, it received a delinquent payment notice and contacted MSHA for an update on the pending contest hearing. It was told to contact the Denver District Office. On July 6, 2023, it emailed MSHA but did not receive a response. The Secretary does not oppose the request to reopen and confirms that the operator did in fact timely contest the proposed assessment.

Having reviewed Ram Enterprise’s request and the Secretary’s response, we conclude that the proposed penalty assessment did not become a final order of the Commission because the operator timely contested the proposed assessment. Section 105(a) states that if an operator “fails to notify the Secretary that he intends to contest the . . . proposed assessment of penalty . . . the citation and the proposed assessment of penalty shall be deemed a final order of the

Commission.” 30 U.S.C. § 815(a). Here, Ram Enterprise notified the Secretary of the contest. This obviates any need to invoke Rule 60(b).

Accordingly, the operator’s motion to reopen is moot, and this case is remanded 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.


Mary Lu Jordan, Chair


Timothy J. Baker, Commissioner


Moshe Z. Marvit, Commissioner

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