

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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SEP 06 2017

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

v.

COEUR ROCHESTER, INC.

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: Docket No. WEST 2017-19-M
: A.C. No. 26-01941-417234
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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 October 7, 2016, the Commission received from Coeur Rochester, Inc. (“Coeur”) 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 August 18, 2016, and became a final order of the Commission on September 19, 2016.

Coeur asserts that it failed to timely contest the proposed assessment due to the resignation of the mine's Safety Coordinator, who had been following a routine and reliable system for reviewing and responding to proposed assessments. Upon the Safety Coordinator's resignation, the mine's Safety Manager took over the Safety Coordinator's duties of handling all aspects of MSHA assessment correspondence. The Safety Manager inadvertently misplaced one of the pages of the proposed assessment listing two citations that the operator had intended to contest, while paying the remaining citation, which was on a non-misplaced page. According to the operator, it discovered this mistake on October 6, 2016, while preparing to file a penalty contest in another case, and filed its motion to reopen the following day. The operator offers a Declaration from the Safety Manager in support of these assertions.

The operator further explains how it has since revised its procedures for handling proposed assessments to ensure that contests will be filed timely. The Secretary does not oppose the request to reopen.

Having reviewed Coeur's request and the Secretary's response, we find that the operator's failure to timely contest the proposed assessment was the result of the Safety Manager misplacing one of the pages of the proposed assessment. We further find that this mistake occurred in the wake of disruption caused by the Safety Coordinator's resignation. 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.



William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

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