

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710

September 6, 2024

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. CENT 2023-0056
v.	:	A.C. No. 41-03401-566398
	:	
COOPER STONE, LLC	:	

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 November 7, 2023, the Commission received from Cooper Stone, LLC (“Cooper Stone”) a motion seeking to reopen a penalty assessment and relieve it from the Default Order entered against it.

On March 20, 2023, the Chief Administrative Law Judge issued an Order to Show Cause in response to Cooper Stone’s perceived failure to answer the Secretary of Labor’s January 17, 2023 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a default on April 20, 2023, when it appeared the operator had not filed an answer within 30 days.

The Judge’s jurisdiction in this matter terminated when the default occurred. 29 C.F.R. § 2700.69(b). Under the Mine Act and the Commission’s procedural rules, relief from a judge’s decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2)(A)(i); 29 C.F.R. § 2700.70(a). If the Commission does not direct review within 40 days of a decision’s issuance, it becomes a final decision of the Commission. 30 U.S.C. § 823(d)(1). Consequently, the Judge’s order here has become a final decision of the Commission. MSHA mailed the operator a delinquency notice on July 5, 2023.

Cooper Stone seeks to reopen this matter, claiming that negotiations with MSHA were ongoing when it received the default order and it mistakenly believed that no answer needed to be filed unless the parties failed to reach an agreement. Cooper Stone states that negotiations with MSHA began on February 2, 2023, and ended on May 30, 2023.

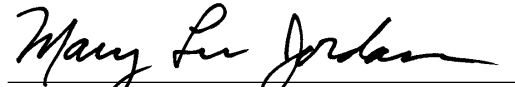
The Secretary opposes Cooper Stone's request to reopen the assessment, asserting that ignorance of the proper procedure is not a sufficient justification for reopening and may indicate an unreliable or inadequate internal processing system. She notes that both the Penalty Petition and Order to Show Cause explained the proper procedure, and that as an experienced operator who had owned the relevant mine since 1992, Cooper Stone should have known how to proceed with penalty contests. The Secretary also asserts that Cooper Stone failed to adequately explain why the motion to reopen was filed four months after MSHA mailed a delinquency notification, and six months after the Show Cause Order was issued (and negotiations ended).

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"); *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (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 will be permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).


However, we have also held that motions to reopen, regardless of merit, are only granted if they are filed within a reasonable time. *E.g., Highland Mining Co.*, 31 FMSHRC 1313, 1316 (Nov. 2009). Motions filed within 30 days of an operator receiving notice that it failed to timely respond are presumptively considered to be filed within a reasonable amount of time. However, motions filed more than 30 days after such notification should include an explanation as to why the operator waited so long to file for reopening, and the lack of such explanation is grounds for the Commission to deny the motion. *Id.* at 1316-17. Here, Cooper Stone received the Judge's Order to Show Cause on March 20 and MSHA sent the operator a delinquency notice on July 5, yet the operator did not file its motion to reopen until November 7, 2023. Cooper Stone has given no explanation for this delay.

Additionally, while "mistake" may provide a basis for relief, we question whether the operator's mistaken belief in this instance was sufficiently reasonable or excusable to justify relief. Cooper Stone, an operator with over 30 years of experience, asserts that it believed an answer to the Petition was not required unless and until negotiations with MSHA ended. However, as the Secretary notes and Cooper Stone acknowledges, the proper procedure for responding to the Penalty Petition was explained in both the Petition and the Judge's Show Cause Order. Regardless, even if the operator's mistaken belief was potentially reasonable, negotiations with MSHA ended on May 30, 2023, and the operator has failed to explain why it waited until November 7, 2023 to request that the proceeding be reopened.

Having reviewed Cooper Stone's request and the Secretary's response, we find that the operator has not demonstrated good cause for reopening the captioned proceeding. Accordingly, we deny Cooper Stone's motion.



Mary Lu Jordan, Chair



Timothy J. Baker, Commissioner



Moshe Z. Marvit, Commissioner

Distribution:

Micah Flippen
Cooper Stone LLC
1003 Hemingway Drive
College Station, TX 77845
Micah.flippen@cooperstone.com

April Nelson, Esq.
Associate Solicitor
Office of the Solicitor
U.S. Department of Labor
Division of Mine Safety and Health
201 12th Street South, Suite 401
Arlington, VA 22202
Nelson.April@dol.gov

Emily Toler Scott, Esq.
Counsel for Appellate Litigation
Office of the Solicitor
U.S. Department of Labor
Division of Mine Safety and Health
201 12th Street South, Suite 401
Arlington, VA 22202
scott.emily.t@dol.gov

Melanie Garris
USDOL/MSHA, OAASEI/CPCO
201 12th Street South, Suite 401
Arlington, VA 22202
Garris.Melanie@DOL.GOV

Chief Administrative Law Judge Glynn F. Voisin
Office of the Chief Administrative Law Judge
Federal Mine Safety Health Review Commission
1331 Pennsylvania Avenue, NW Suite 520N
Washington, DC 20004-1710
GVoisin@fmshrc.gov