

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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September 8, 2021

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH : Docket No. PENN 2020-0004
ADMINISTRATION (MSHA) : A.C. No. 46-01968-483591
 :
v. : Docket No. PENN 2020-0005
 : A.C. No. 46-01968-485001
MONONGALIA COUNTY COAL CO. :

BEFORE: Traynor, Chair; Althen and Rajkovich, 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 October 15, 2019, the Commission received from Monongalia County Coal Company two motions seeking to reopen penalty assessments that had become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).¹

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

¹ For the limited purpose of addressing these motions to reopen, we hereby consolidate Docket Nos. PENN 2020-0004 and PENN 2020-0005 involving similar procedural issues. 29 C.F.R. § 2700.12.

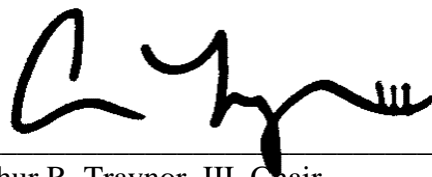
proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessments were delivered on February 21, 2019, and March 15, 2019, and became final orders on March 23, 2019, and April 14, 2019, respectively. Monongalia states that in June 2019, its safety director informed MSHA’s Civil Penalty Compliance Office that he was no longer receiving proposed penalty assessments at an address in Holbrook, Pennsylvania. The safety director later provided MSHA’s Civil Penalty Compliance Office an address to use for future mailings. The operator further submits that on June 6, 2019, Monongalia sent payment for penalties associated with a total of six citations listed on the two proposed penalty assessment forms.

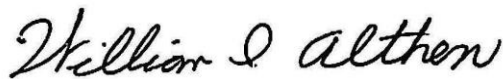
The Secretary does not oppose the requests to reopen, and notes that MSHA received payment for some of the citations listed on the proposed assessments on July 3, 2019, and on September 17, 2019. The Secretary urges the operator to take steps to ensure that future penalty contests are timely filed.

The operator does not explain when its change of address occurred, and the reasons for delay between the time that the proposed penalty assessments were delivered and its action in June 2019. It is unclear from the record whether MSHA mailed the proposed assessments to Monongalia’s official address of record at the time of the assessments and whether Monongalia maintained its correct address with MSHA.

On the basis of the present record, we are unable to evaluate the merits of Monongalia’s position. In the interest of justice, we remand the matter to the Chief Judge for assignment to a Judge to determine whether Monongalia has met the criteria for relief under Rule 60(b). If the Judge determines that such relief is appropriate, this case shall proceed pursuant to the Mine Act and the Commission’s Procedural Rules, 29 C.F.R. Part 2700.



Arthur R. Traynor, III, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner

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