FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

SEP 14 2017

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)	:	
	:	Docket No. VA 2016-70
v.	:	A.C. No. 44-07087-398370
REVELATION ENERGY, LLC	:	

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 3, 2016, the Commission received from Revelation Energy, LLC ("Revelation") a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On March 23, 2016, the Chief Administrative Law Judge issued an Order to Show Cause in response to Revelation's failure to answer the Secretary of Labor's January 27, 2016 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on April 25, 2016, when it appeared that the operator had not filed an answer with the Judge within 30 days. The Secretary issued a delinquency letter in this matter on July 19, 2016. Revelation's motion to reopen was not filed until 76 days after the delinquency letter was sent.

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 became a final order of the Commission on June 6, 2016.

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).

In the instant matter, Revelation claims that it failed to timely answer the petition for assessment or respond to the Show Cause Order because the docket had been misplaced "due to changes in personnel within [their] office and due to large volume [sic] of dockets being received. . . ." As of the date of the request to reopen, Revelation claims that it "recently discovered the docket" and thus became aware that the Petition and Order to Show Cause had not been answered.

The Secretary opposes Respondent's request to reopen, asserting that Revelation has failed to identify "exceptional circumstances" warranting reopening. The Secretary argues that the reasons given by the operator amount to an acknowledgement that Revelation had an inadequate or unreliable internal processing procedure, which is not a valid basis for granting reopening. The Secretary asserts that Revelation's lack of diligence was particularly inexcusable because it had contested the issuances and therefore knew a petition involving significant penalties would be arriving. In response to Revelation's contention that it had received a large number of dockets, the Secretary argues that such an occurrence should have led the operator to be more diligent, rather than less. Finally, the Secretary argues that Revelation's delay in filing a request to reopen is unexplained and militates against granting that request.

Revelation's complete absence of attention to the present enforcement matter appears to be part of a pattern of neglect. While having contested the initial penalties, Revelation failed to respond to the Petition, the Order to Show Cause, and the delinquency notice for a significant amount of time. Revelation only appears to have taken action after the matter was escalated to the U.S. Treasury for collection. In addition, we note that Revelation has filed three other motions to reopen with the Commission in the last two years.[1]

Furthermore, Revelation's motion does not address numerous questions we have repeatedly flagged as important for operators to address when seeking relief from a default order. Revelation's motion fails to state how and when the failure to timely respond to the Order to Show Cause was discovered or how it responded once it found out that the case was in default. *See Lone Mountain Processing, Inc.*, 35 FMSHRC 3342, 3345 n. 3 (Nov. 2013). Revelation does not explain why it took over 30 days to file a motion to reopen with the Commission upon receiving a delinquency notice. *See Concrete Mobility, LLC*, 37 FMSHRC 1709, 1710 (Aug. 2015); *Lone Mountain Processing, Inc.*, 33 FMSHRC 2373 (Oct. 2011); *Highland Mining*, 31 FMSHRC 1313, 1317 (Nov. 2009). Revelation does not provide any indication that it had taken steps to address any of the problems that lead to it mishandling of the present case. *See Highland Mining Co.*, 31 FMSHRC 1313, 1316 (Nov. 2009).

[1] Revelation filed motions to reopen in Docket Nos. KENT 2015-410, KENT 2016-310, and KENT 2016-311.

The facts that Revelation did provide lacked specificity as to the grounds justifying relief. *See Eastern Associated Coal, LLC*, 30 FMSHRC 392, 394 & n. 2 (May 2008) (operators filing a motion to reopen must "provide a sufficiently detailed explanation for its failure to timely contest the proposed penalty assessment" and "disclose with specificity its grounds for relief."). From Revelation's motion, we know only that, during some undefined period of time, there were personnel changes in Revelation's office and that they were involved with a large number of dockets before the Commission.

Given Revelation Energy's repeated failures to respond in this case and the operator's insufficient motion, we conclude that the operator had an inadequate or unreliable internal processing system. As the Commission has consistently held, explanations for failures to answer an order to show cause founded upon a lack of internal procedures constitute inexcusable neglect and are an insufficient basis for reopening an assessment. *See, e.g., Lone Mountain Processing, Inc.*, 35 FMSHRC at 3346 (Nov. 2013); *Oak Grove Res., LLC*, 33 FMSHRC 103, 104 (Feb. 2011); *Elk Run Coal Co.*, 32 FMSHRC 1587, 1588 (Dec. 2010).

Revelation failed to establish that it had good cause for its failure to file a timely contest to the assessment in this matter. In fact, the operator's behavior evidences a serious lack of care regarding enforcement actions under the Mine Act. Moreover, the operator consistently failed to provide any reasonable explanations for its substantial delays in this matter. At best, the operator's excuses amounted to an acknowledgement that it had an inadequate internal processing system. We therefore deny the motion.

William I. Althen, Acting Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

Distribution:

Joseph G. Jacobs
Revelation Energy, LLC
P.O. Box 249
Stanville, KY 41659

W. Christian Schumann, Esq.
Office of the Solicitor
U.S. Department of Labor
201 12th St. South, Suite 500
Arlington, VA 22202-5450

Chief Administrative Law Judge Robert J. Lesnick
Federal Mine Safety & Health Review Commission
1331 Pennsylvania Ave. N.W., Suite 520N
Washington, DC 20004-1710

Melanie Garris
Office of Civil Penalty Compliance
Mine Safety and Health Administration
U.S. Department of Labor
201 12th St. South, Suite 500
Arlington, VA 22202-5450