

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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WASHINGTON, DC 20004-1710

**September 20, 2023**

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEST 2023-0221
v.	:	A.C. No. 24-00910-572821
	:	
WESTMORELAND ABSALOKA	:	
MINING, LLC	:	

BEFORE: Jordan, Chair; Althen, Rajkovich, and Baker, 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 May 9, 2023, the Commission received from Westmoreland Absaloka Mining, LLC (“Westmoreland”) 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 March 23, 2023 and became a final order of the Commission on April 24, 2023. MSHA received partial payment of the assessment on April 20, 2023, a few days before the assessment became a final order. The Secretary does not oppose the request to reopen.

Payments for uncontested citations must be mailed to MSHA's Lock Box in St. Louis, Missouri. However, contests of proposed assessments must be mailed to a different MSHA address in Arlington, Virginia. On April 13, 2023, Westmoreland correctly mailed its payment for the uncontested citations to St. Louis. However, on the same day, Westmoreland mistakenly mailed its contest along with its payment to the St. Louis address.

On April 24, the assessment became a final order. Two days later, Westmoreland was informed by MSHA that its first contest was sent to an incorrect address. Therefore, on April 26, Westmoreland sent a second contest, this time via email, to MSHA's email address. On April 28, MSHA informed the operator that its second contest was untimely filed.

We note that the motion to reopen was timely filed. The Commission has previously held that "[m]otions to reopen received within 30 days of an operator's receipt of its first notice from MSHA that it has failed to timely file a notice of contest will be presumptively considered as having been filed within a reasonable amount of time." *Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009). Here, the motion to reopen was filed on May 9, 2023, within 30 days of the final order of April 24, 2023. Therefore, the motion to reopen was filed within a reasonable amount of time.

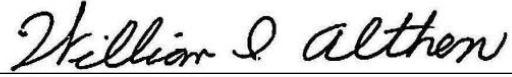
Having reviewed Westmoreland's request and the Secretary's response, we find that Westmoreland has demonstrated good cause for its failure to timely respond and acted in good faith by timely filing its request to reopen. In the interest of justice, we hereby reopen this matter and remand it to the Chief 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.



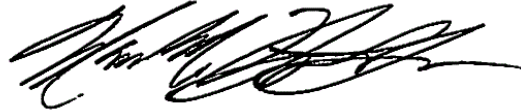
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Mary Lu Jordan, Chair



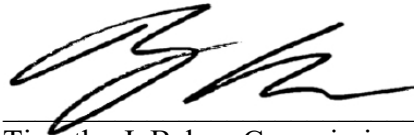
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William I. Althen, Commissioner



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Marco M. Rajkovich, Jr., Commissioner



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Timothy J. Baker, Commissioner

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