

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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September 20, 2023

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEVA 2023-0191
v.	:	A.C. No. 46-09319-569162
	:	
GREENBRIER MINERALS, 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 February 16, 2023, the Commission received from Greenbrier Minerals, LLC (“Greenbrier”) 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).

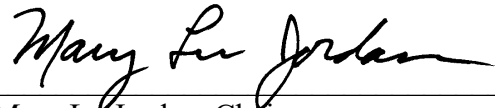
Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessment was delivered on January 7, 2023, and became a final order of the Commission on February 6, 2023. The following day, Greenbrier filed its contest of the assessment. A few days later, Greenbrier received a letter from MSHA informing Greenbrier that the contest for the assessment had been untimely filed. On February 16, 2023, MSHA received partial payment of the assessment.

Greenbrier seeks to reopen the assessment so that it may contest five citations—Citation Nos. 9590068, 9590072, 9590074, 9590087, and 9590088.¹ Greenbrier maintains that its safety specialist miscalculated the deadline to submit the contest of the assessment as February 7, 2023, resulting in the contest being filed one day after the deadline to contest the assessment. The Secretary of Labor does not oppose the request to reopen.

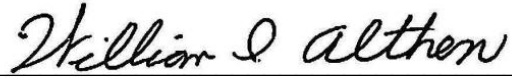
We note that the motion to reopen was timely filed. The Commission has previously held that “[m]otions to reopen received within 30 days of an operator’s receipt of its first notice from MSHA that it has failed to timely file a notice of contest will be presumptively considered as having been filed within a reasonable amount of time.” *Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009). Here, the motion to reopen was filed on February 16, 2023, within 30 days of the final order of February 6, 2023. Therefore, the motion to reopen was filed within a reasonable amount of time.

¹ The operator states that it is in the process of paying the full amount of the proposed assessment but maintains that any payment of these citations is made merely to avoid any potential delinquencies and does not waive its right to contest these five citations. Motion to Reopen, at 1 n.1. Commissioner Baker has previously stated that it is his position that the accidental payment of a civil penalty does not constitute excusable neglect. *See e.g. Omya, Inc.*, 45 FMSHRC 131 (Mar. 2023). However, in light of the operator’s explanation for its payment of the civil penalty, Commissioner Baker would determine that in the instant case payment was not the result of an inadequate or unreliable internal processing system.

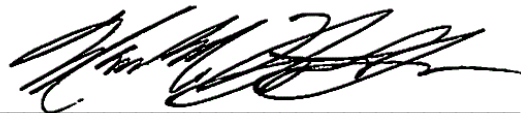
Having reviewed Greenbrier's request and the Secretary's response, we find that Greenbrier has demonstrated good cause for its failure to timely respond and acted in good faith by timely filing its request to reopen. In the interest of justice, we hereby reopen this matter and remand it to the Chief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



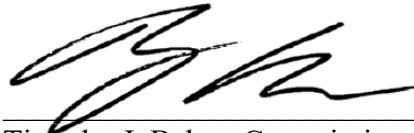
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