

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

SEP 29 2017

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. CENT 2017-109-M
v.	:	A.C. No. 29-02278-419312
	:	
HORIZON AG PRODUCTS	:	

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 December 9, 2016, the Commission received from Horizon AG Products (“Horizon”) 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), 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 September 10, 2016, and became a final order of the Commission on October 11, 2016. Horizon asserts that it sent a contest letter to MSHA on September 23, 2016. The operator included a UPS tracking slip showing that a package was sent on September 23, 2016, and delivered on September 27, 2016.¹ On December 5, 2016, a representative from MSHA’s Dallas office wrote an e-mail to Horizon acknowledging receipt of contest from Horizon but informing the operator that it should have mailed the documents to the Arlington, Virginia office. Horizon’s motion to reopen is dated the same day. Horizon claims it misunderstood the contest instruction sheet. Its safety director averred that he was unfamiliar with the contest procedures, having never contested a citation before. Horizon has not filed any other motions to reopen with the Commission in the last two years, and the operator responded immediately upon discovering its mistake. The Secretary does not oppose the request to reopen.

¹ The UPS tracking slip shows that a package was sent on September 23, 2016 and delivered to “Gonzalez” in “Dallas, TX” on September 27, 2016. It does not state the exact address to which the package was sent. A representative of MSHA’s field office in Dallas acknowledged receipt of a contest form, but did not state the date of receipt.

Having reviewed Horizon's request and the Secretary's response, we find that Horizon mistakenly mailed the contest to the wrong address. 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.



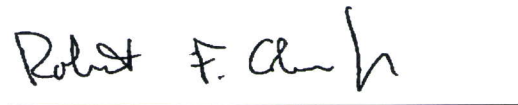
William I. Althen, Acting Chairman



Mary Lu Jordan, Commissioner



Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner

Distribution:

Justin B. Lindgren
Assistant Plant Manager
Horizon AG Products
23 Cubita Rd.
Cuba, NM 87013

Justin B. Lindgren
Assistant Plant Manager
Horizon AG Products
1450 Infinite Dr.
Louisville, CO 80027

Ali Beydoun, Esq.
Office of the Solicitor
U.S. Department of Labor
201 12th St. South, Suite 401
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