

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

SEP 29 2017

v.

INDEPENDENCE RECYCLING, INC.

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: Docket No. CENT 2017-79-M
: A.C. No. 23-00196-415609 V161
:
:

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 November 21, 2016, the Commission received from Independence Recycling, Inc. (“Independence”) 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 dated July 19, 2016, and became a final order of the Commission on September 19, 2016.¹ Independence asserts that that it inadvertently sent the contest form to MSHA’s St. Louis office with a check for an uncontested citation instead of to the Arlington Office. The operator only learned of its mistake when it received a delinquency notice from MSHA, which was mailed on November 4, 2016. Independence asserts that it then promptly filed the contest with the Arlington, Virginia office. Independence filed its motion to reopen on November 21, 2016, less than 30 days after it learned that it had failed to contest the proposed assessment. The operator has not filed any other motions to reopen with the Commission in the last two years. The Secretary does not oppose the request to reopen.


Having reviewed Independence’s request and the Secretary’s response, we find that Independence inadvertently mailed its contest to the wrong MSHA office. 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

¹ The exact date of delivery of the proposed assessment is unclear. The operator’s representative signed the Notice of Contest Rights and Instructions form on July 29, 2016. The operator wrote a check to partially satisfy the penalty in this matter on August 2, 2016. The Commission cannot determine the basis for the Secretary’s representation that the proposed assessment became a final order on September 19, 2016.

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