

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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SEP 29 2017

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEST 2016-465-M
v.	:	A.C. No. 04-05857-402321
	:	
UPLAND ROCK	:	

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 May 10, 2016, the Commission received from Upland Rock 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 February 10, 2016, and

became a final order of the Commission on March 11, 2016. Upland Rock asserts that it mailed its contest back to MSHA on February 12, 2016. The operator included certified mail receipts to show it attempted to send this form.¹ Similarly, Upland Rock argues that it mailed a letter to MSHA evidencing its intent to contest the citations on March 10, 2016. However, the mailing receipts accompanying the letter show that the document was sent to a local MSHA office in Vacaville, California, instead of to the MSHA office in Arlington, Virginia.² The Vacaville MSHA office received the letter on March 14, 2016. Upland Rock claims that it only learned that the Secretary had not properly received the documents it filed when it received a notice of delinquency on April 29, 2016. Upland Rock 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, but urges the operator to take steps to ensure that future penalty contests are timely filed.

¹ The certified mail receipt provided by the operator does not contain a mailing address but indicates that the contest was sent to Washington, D.C. USPS records further indicate that the contest never left the mail processing facility in Rancho Cucamonga, CA. As contests are required to be mailed to MSHA's headquarters in Arlington, VA, it is likely that USPS was unable to deliver the contest to the proper address.

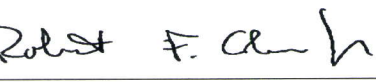
² Adding to the confusion in this matter, the March 10, 2016, letter listed the correct Assessment Control Number, No. 00402321, and the correct Order Number, No. 8788069, but an incorrect docket number. The docket listed in the mailed response, No. WEST 2016-241, does not contain the citation at issue here.

Having reviewed Upland Rock's request and the Secretary's response, we find that mistakenly sent its contest documents 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

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