

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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June 9, 2011

SECRETARY OF LABOR :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
 : Docket No. KENT 2011-210
v. : A.C. No. 15-18936-206241
 :
MRM MINING, INC. :

BEFORE: Jordan, Chairman; Duffy, Young, Cohen, and Nakamura, 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. (2006) (“Mine Act”). On November 12, 2010, the Commission received a request to reopen a penalty assessment issued to MRM Mining, Inc. (“MRM”) that became 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 section 105(a) orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure under which, for example, a party could be entitled to relief from a final order of the Commission on the basis of mistake, inadvertence, or excusable neglect. *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).

On December 16, 2009, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued Proposed Assessment No. 000206241 to MRM for 15 citations. The record

indicates that the assessment was returned undelivered, as was the subsequent delinquency notice sent by MSHA, and a letter notifying MRM that its contest filed on April 16, 2010, was untimely.¹ MRM states that it did not receive the assessment in a timely manner due to a change made to its address. It submits that it no longer receives its mail at a “physical address,” but at a post office box instead.

The Secretary opposes MRM’s request, asserting that it is the operator’s responsibility to notify MSHA of any change of address within 30 days of the change. She acknowledges that according to MSHA records, MRM requested that its address be updated to reflect its new P.O. Box on April 8, 2010. The Secretary notes that in July 2010 the Department of Treasury notified the operator that the assessment was delinquent, and in response, MRM filed a Dispute Form with Treasury. She maintains that the operator’s untimely contest establishes that MRM was aware of the proposed assessment as early as April 16, 2010, and that the notification from Treasury in July brought the delinquency to its attention again. However, the operator waited until November 2010 to file its request to reopen.

It is an operator’s responsibility to file with MSHA the address of a mine and any changes of address within 30 days. 30 C.F.R. §§ 41.10, 41.12. In the present case, it does not appear from the record that MRM maintained its correct address with MSHA as required by the regulations. Because MSHA was not notified until April 8, 2010, of MRM’s change of address, it appears that the proposed assessment, issued on December 16, 2009, was served at the operator’s official address of record. *See The Pit*, 16 FMSHRC 2033, 2034 (Oct. 1994); *Harvey Trucking*, 21 FMSHRC 567, 569 n.1 (June 1999).

Having reviewed the operator’s request to reopen and the Secretary’s response thereto, we conclude that MRM has failed to provide a sufficient basis for the Commission to reopen the penalty assessment. MRM’s request does not adequately explain the company’s failure to timely contest the proposed assessment. Specifically, MRM has offered no explanation as to when it changed its address and why it delayed in notifying MSHA of the change. It also fails to provide a detailed explanation of when and how it first received the proposed assessment. In addition, the operator has failed to explain why it delayed approximately four months in filing its request to reopen after learning of the delinquency from Treasury. Accordingly, we hereby deny without prejudice MRM’s request to reopen. *FKZ Coal Inc.*, 29 FMSHRC 177, 178 (Apr. 2007); *Petra Materials*, 31 FMSHRC 47, 49 (Jan. 2009). The words “without prejudice” mean that MRM may submit another request to reopen Assessment No. 000206241.² Any amended or renewed request by the operator to

¹ On April 16, 2010, the operator mailed in its contest form to the MSHA office in St. Louis, MO. The form did not identify which citations were being contested, nor did it contain any payment.

² If MRM submits another request to reopen, it must establish good cause for not contesting the proposed penalties within 30 days from the date it received the assessment from MSHA. Under Rule 60(b) of the Federal Rules of Civil Procedure, the existence of “good cause” may be shown by a number of different factors including mistake, inadvertence, surprise, or excusable neglect on the

reopen this assessment must be filed within 30 days of this order. Any such request filed after that time will be denied with prejudice.

Mary Lu Jordan, Chairman

Michael F. Duffy, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

Patrick K. Nakamura, Commissioner

part of the party seeking relief, or the discovery of new evidence, or fraud, misrepresentation, or other misconduct by the adverse party. MRM should include a full description of the facts supporting its claim of “good cause,” and address the issues raised in this Order, as part of its request to reopen. MRM should also submit copies of supporting documents with its request to reopen.

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