

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).

The Secretary states that she does not oppose reopening the proposed penalty assessment. The record indicates that a recently hired employee of the operator forwarded a check covering all citations covered by a proposed penalty assessment except for two citations which the operator intended to contest. However, the employee inadvertently neglected to file contests for those two penalties. When he learned of his mistake, he belatedly submitted the contest form to the Secretary.

Having reviewed Dickenson-Russell's request and the Secretary's response, in the interests 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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