

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 June 18, 2009, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued Proposed Assessment No. 000188492 to North County. North County asserts that it timely sent in a contest form but because of “some undetermined mistake, not attributable to the operator, . . . MSHA did not receive the request for a hearing.” North County submitted the affidavit of its chief financial officer and office manager stating that she placed the completed contest form in “the self-addressed envelope that was included with the assessment” and mailed the form, without obtaining proof of mailing, before the expiration of the 30-day deadline.

The Secretary opposes North County’s request to reopen because its explanation is inconsistent with MSHA’s procedures in that MSHA does not provide self-addressed envelopes with proposed assessments. In addition, MSHA has no record of receiving a contest form. She maintains that the operator’s contention of “some indeterminate mistake” is conclusory, lacks sufficient detail, and does not provide adequate grounds for reopening. The Secretary also notes that a delinquency notice was sent to the operator on September 10, 2009, more than six months before it filed its reopening request, and the case was referred to the Treasury Department for collection on January 7, 2010.

Having reviewed North County’s request to reopen and the Secretary’s response thereto, we agree that the operator has failed to provide a sufficient basis for the Commission to reopen the penalty assessment. In addition, North County has failed to explain why it delayed approximately six months in responding to the delinquency notice sent by MSHA.¹ Accordingly, we hereby deny without prejudice North County’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 North County may submit another request to reopen the Assessment No. 000188492.² Any amended or renewed request by the operator to reopen this

¹ In considering whether an operator has unreasonably delayed in filing a motion to reopen a final Commission order, we find relevant the amount of time that has passed between an operator’s receipt of a delinquency notice and the operator’s filing of its motion to reopen. *See, e.g., Left Fork Mining Co.*, 31 FMSHRC 8, 11 (Jan. 2009); *Highland Mining Co.*, 31 FMSHRC 1313,1316 (Nov. 2009) (holding that motions to reopen filed more than 30 days after receipt of notice of delinquency must explain the reasons why the operator waited to file a reopening request, and lack of explanation is grounds for the Commission to deny the motion).

² If North County 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

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

excusable neglect on the part of the party seeking relief, or the discovery of new evidence, or fraud, misrepresentation, or other misconduct by the adverse party. North County should include a full description of the facts supporting its claim of “good cause,” including how the mistake or other problem prevented it from responding within the time limits provided in the Mine Act, as part of its request to reopen. North County should also submit copies of supporting documents with its request to reopen and specify which proposed penalties it is contesting. North County should further include an explanation for why the operator waited so long to file for reopening after receipt of the notice of delinquency.

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