

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N

WASHINGTON, D.C. 20004-1710

April 11, 2014

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. WEVA 2013-1945
ADMINISTRATION (MSHA)	:	A.C. No. 46-08864-316833 X626
	:	
v.	:	Docket No. WEVA 2013-1946
	:	A.C. No. 46-08864-319764 X626
MEIGS MINE SERVICE, LLC	:	

BEFORE: Jordan, Chairman; Young, Cohen, Nakamura, and Althen, Commissioners

ORDER

BY THE COMMISSION:

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”). On June 19, 2013, the Commission received from Meigs Mine Service, LLC (“Meigs”) two motions seeking to reopen two penalty assessments that had become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).<sup>1</sup>

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 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

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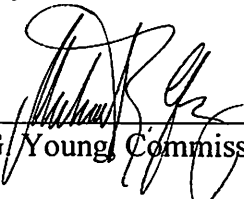
<sup>1</sup> Pursuant to Commission Procedural Rule 12, on our own motion, we hereby consolidate docket numbers WEVA 2013-1945 and WEVA 2013-1946, both captioned *Meigs Mine Service, LLC*, and involving similar procedural issues. 29 C.F.R. § 2700.12.

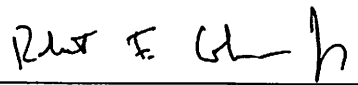
observed that default is a harsh remedy and that, if the defaulting party can make a showing of good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Records of the Department of Labor's Mine Safety and Health Administration ("MSHA") indicate that proposed assessment No. 000316833 was delivered on March 25, 2013, and became a final order of the Commission on April 24, 2013. Proposed assessment No. 000319764 was delivered on April 30, 2013, and became a final order of the Commission on May 30, 2013. Meigs asserts that three of its safety management personnel were experiencing medical issues, causing the failure to timely contest the assessments. The Secretary does not oppose the requests to reopen and urges the operator to adopt procedures to ensure that future penalty contests are timely filed.


Having reviewed Meigs' requests and the Secretary's response, in the interest of justice, we hereby reopen these matters and remand them 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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Mary Lu Jordan, Chairman

  
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Michael G. Young, Commissioner

  
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Robert F. Cohen, Jr., Commissioner

  
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Patrick K. Nakamura, Commissioner

  
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William I. Althen, Commissioner

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