

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	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEVA 2013-761-M
v.	:	A.C. No. 46-04694-293123 7YE
	:	
BECKLEY DRILLING & BLASTING	:	
SERVICES, INC.	:	

BEFORE: Jordan, Chairman; Young, Cohen, Nakamura, and Althen, 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 April 11, 2013, the Commission received from Beckley Drilling & Blasting Services, Inc. (“Beckley”) 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).

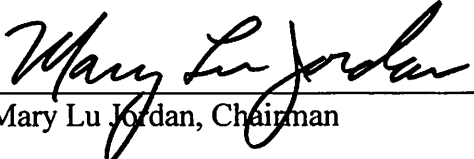
Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of 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 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).

This case involves Citation No. 8656936, which was included on Proposed Assessment No. 293123 issued by MSHA on June 21, 2012. On June 25, 2012, Beckley's President sent a letter to MSHA contesting the proposed assessment associated with this citation, as well as two other citations contained in a separate proposed assessment. According to MSHA records, Beckley enclosed a contest form for the other proposed assessment but not for Proposed Assessment No. 293123. MSHA's Civil Penalty Compliance Office acknowledged receipt of the contest of the two citations in the other proposed assessment, but not for the contest of the proposed assessment in Citation No. 8656936. Thus, according to MSHA records, the penalty for Citation No. 8656936 became a final order of the Commission on July 27, 2012. On July 30, 2012, Beckley sent a second letter to MSHA contesting the three citations and their associated proposed assessments. Beckley asserts that upon investigating the status of Citation No. 8656936 in the MSHA Data Retrieval System on April 2, 2013, it discovered the alleged delinquency.

The Secretary does not oppose the request to reopen, but notes that the operator never submitted a contest form in this case. The Secretary urges the operator to include MSHA Form 1000-179 with all future contests, as instructed in the proposed assessment.

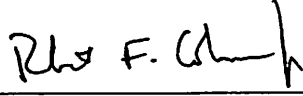
Having reviewed Beckley's request and the Secretary's response, in the interest of justice, we hereby reopen this matter and remand it to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700. Accordingly, consistent 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.




Mary Lu Jordan, Chairman




Michael G. Young, Commissioner



Robert F. Cohen, Jr., Commissioner



Patrick K. Nakamura, Commissioner



William I. Althen, Commissioner

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