

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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November 26, 2010

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEVA 2010-918
	:	A.C. No. 46-08884-203963 X359
v.	:	
	:	
	:	
COAL COUNTRY 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 April 22, 2010, the Commission received a request to reopen a penalty assessment issued to Coal Country Mining, Inc. (“Coal Country”) 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 October 20, 2009, the Department of Labor's Mine Safety and Health Administration ("MSHA") issued 19 citations/orders to Coal Country. On November 24, 2009, MSHA issued Proposed Assessment No. 000203963 to Coal Country, which proposed civil penalties for three of the citations/orders that were issued on October 20, 2009. On December 22, 2009, MSHA issued Penalty Assessment No. 000206855 covering the remaining 16 citations/orders from the inspection of October 20, 2009. Coal Country asserts that it intended to contest all citations stemming from the inspection on October 20, 2009. It further submits that it successfully contested the penalties for the 16 citations that were contained on the December 2009 penalty assessment. With respect to Assessment No. 000203963, Coal Country submits that it sent the assessment to its representative to contest but that the assessment was never received. The representative further submits that he discovered that Penalty Assessment No. 000203963 had not been contested while reviewing MSHA's website but does not indicate when that occurred.

The Secretary opposes Coal Country's request to reopen because its explanation lacks sufficient detail as to why it failed to timely contest the assessments. She maintains that an inadequate or unreliable internal office procedure does not provide sufficient grounds for reopening. The Secretary notes that a delinquency notice was sent to the operator on February 16, 2010, two months before it filed its reopening request.

Having reviewed Coal Country'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, Coal Country has failed to explain why it delayed approximately two months in responding to the delinquency notice sent by MSHA.¹ Accordingly, we hereby deny without prejudice Coal country'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 Coal Country may submit another request to reopen Assessment No. 000203963.² 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 Coal Country 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. Coal Country 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. Coal Country should also submit copies of supporting documents with its request to reopen.

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