

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

SUITE 9500

WASHINGTON, DC 20001

May 26, 2011

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| SECRETARY OF LABOR, | : | |
| MINE SAFETY AND HEALTH | : | |
| ADMINISTRATION (MSHA) | : | |
| | : | Docket No. WEVA 2011-556 |
| v. | : | A.C. No. 46-05437-234136 |
| | : | |
| SPEED MINING, LLC, | : | |

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 December 7, 2010, Speed Mining, LLC, (“Speed Mining”) filed a motion requesting that the Commission 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 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).

Speed Mining states that it intended to contest Citation Nos. 8101994, 8101995 and 8102002 contained in Proposed Assessment No. 000234136. It further states that due to a “clerical error,” however, the contest form was misplaced and was not filed.

On January 13, 2011, the Secretary of Labor filed a response to Speed Mining’s motion to reopen. She asserts, among other things, that the operator’s statements are conclusory and lack sufficient detail. Therefore, the Secretary requests that the operator’s motion be denied.

The Commission has established that “[a]t a minimum, the applicant for such relief must provide all known details, including relevant dates and persons involved, and a clear explanation that accounts, to the best of the operator’s knowledge, for the failure to submit a timely response and for any delays in seeking relief once the operator became aware of the delinquency failure.” *Higgins Stone Co.*, 32 FMSHRC 33, 34 (Jan. 2010). In addition, the request should include “[a]ffidavits from persons involved in and knowledgeable of the situation and pertinent documents.” *Id.*

Having reviewed Speed Mining's motion to reopen, we conclude that the operator has not provided a sufficiently detailed explanation for its failure to timely contest the proposed penalty assessment. As a result, we conclude that grounds for reopening have not been established. *See id.* at 34-35; *Long Branch Energy*, 32 FMSHRC 1220, 1221 (Oct. 2010). Accordingly, Speed Mining's request to reopen Proposed Assessment No. 000234136 is denied without prejudice. Any amended or renewed request by the operator to reopen this 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

Distribution:

Michael T. Cimino, Esq.
Jackson Kelly, PLC
1600 Laidley Tower
P.O. Box 553
Charleston, WV 25322

W. Christian Schumann, Esq.
Office of the Solicitor
U.S. Department of Labor
1100 Wilson Blvd., Room 2220
Arlington, VA 22209-2296

Melanie Garris
Office of Civil Penalty Compliance
MSHA
U.S. Dept. Of Labor
1100 Wilson Blvd., 25th Floor
Arlington, VA 22209-3939

Chief Administrative Law Judge Robert J. Lesnick
Federal Mine Safety & Health Review Commission
601 New Jersey Avenue, N. W., Suite 9500
Washington, D.C. 20001-2021