

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, D.C. 20004-1710

November 20, 2020

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

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v.

Docket No. WEVA 2019-0221
A.C. No. 46-02119-481551

INWOOD QUARRY, INC.

BEFORE: Rajkovich, Chairman; Althen and Traynor, 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 July 23, 2019, the Commission received from Inwood Quarry, Inc. (“Inwood”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On April 2, 2019, the Chief Administrative Law Judge issued an Order to Show Cause in response to Inwood’s perceived failure to answer the Secretary of Labor’s February 13, 2019 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on April 23, 2019, when it appeared that the operator had not filed an answer within 20 days.

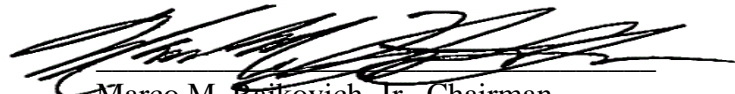
Inwood claims that it never received the hearing packet and was told by someone at MSHA that the hearing paperwork was delivered to an address at “Rt. 11 South, Inwood, WV,” which it states is not an address for the company. MSHA’s Operator Information System and the company’s MSHA Legal ID Report shows Inwood’s principal office address as “Rt. 11 South.” The Judge’s Show Cause Order was also sent to “Rt. 11 South.” The Secretary responds that the Proposed Penalty Assessment was sent to P.O. Box 65, Inwood, WV 25428, which Inwood states is the correct address. However, we note that while the correct address appears on the Proposed Penalty Assessment form, the incorrect address appears in the Certificate of Service for the Penalty Assessment. The Secretary does not oppose the motion to reopen, but urges the operator to ensure that its mailing address is correctly filed with MSHA, that its responses are timely filed, and that Show Cause Orders are taken seriously.

The Judge’s jurisdiction in this matter terminated when the default occurred. 29 C.F.R. § 2700.69(b). Under the Mine Act and the Commission’s procedural rules, relief from a judge’s

decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2)(A)(i); 29 C.F.R. § 2700.70(a). If the Commission does not direct review within 40 days of a decision's issuance, it becomes a final decision of the Commission. 30 U.S.C. § 823(d)(1). Consequently, the Judge's order here has become a final decision of the Commission.

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"); *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993). 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 will be permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).


Having reviewed Inwood's request and the Secretary's response, in the interest of justice, we hereby reopen the proceeding and vacate the Default Order. Accordingly, this case is remanded 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



Marco M. Rajkovich, Jr., Chairman



William I. Althen, Commissioner



Arthur R. Traynor, III, Commissioner

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