

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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January 22, 2021

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) : VA 2020-0057-M
 : A.C. No. 44-02783-513669
v. :
 :
LIMESTONE DUST CORP. :

BEFORE: Traynor, Chair; Althen and Rajkovich, Commissioners

ORDER

BY THE COMMISSION:

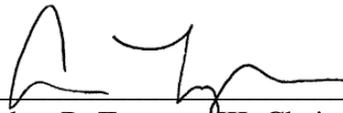
This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”). On August 3, 2020, the Commission received from Limestone Dust Corp. (“LDC”) a motion seeking to reopen a penalty assessment that appeared to have become a final order of the Commission 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).

Records of the Department of Labor's Mine Safety and Health Administration ("MSHA") indicate that the proposed assessment was delivered on May 7, 2020, and became a final order of the Commission on June 8. LDC's motion states that it timely completed the contest form and emailed it to an attorney in a law firm with which it had previously worked. That attorney, however, was away from the firm. It appears, therefore, that the failure to file resulted from a miscommunication by email during the pandemic and was corrected immediately upon discovery. We urge operators and representatives to take proper measures to assure adequate communications during this challenging period.

The Secretary does not oppose the requests to reopen, but urges the operator to take steps to ensure that future penalty contests are timely filed. Having reviewed LDC's request and the Secretary's response, we find that the operator has sufficiently explained its failure to timely contest the citations at issue as the result of mistake, inadvertence, and excusable neglect. The operator diligently followed up on the contest, and the motion was quickly filed and is well-documented. 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.



Arthur R. Traynor, III, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner

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