

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710

May 14, 2021

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEVA 2017-0561
v.	:	A.C. No. 46-09427-442620A
	:	
JAMES IRVIN, AGENT OF RHINO	:	
EASTERN, LLC, EAGLE 3 MINE	:	

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. (2018) (“Mine Act”). On July 3, 2018, the Commission received from James Irvin, Agent of Rhino Eastern, LLC, Eagle 3 Mine (“Irvin”), a motion seeking to reopen a penalty assessment proceeding and relieve Irvin from the Default Order entered against him.

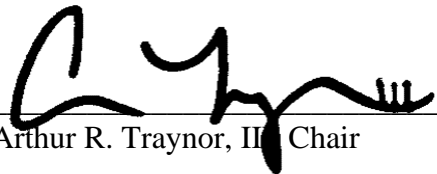
On November 7, 2017, the Chief Administrative Law Judge issued an Order to Show Cause in response to Irvin’s perceived failure to answer the Secretary of Labor’s September 21, 2017 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on December 14, 2017, when it appeared that Irvin had not filed an answer within 30 days.

Irvin explains that the reason that he did not send a contest of the proposed penalty assessment is that he received a letter from the Department of Labor’s Mine Safety and Health Administration (“MSHA”) stating that all charges had been dropped. He disregarded subsequent letters as an oversight and mistakenly believed that the matter had settled. The Secretary does not oppose the request to reopen, but states that Irvin should take steps to ensure that any future penalty contests are timely filed and should take seriously all show cause orders issued by the Judge.


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).

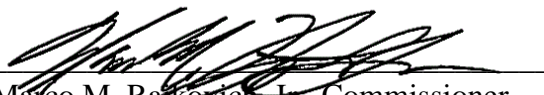
Having reviewed Irvin's request and the Secretary's response, we find that Irvin has sufficiently explained his failure to timely contest the citations at issue as the result of mistake, inadvertence, and excusable neglect. In the interest of justice, we hereby reopen this matter and remand it to the 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, II, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner

Distribution:

James L. Irvin
638 Givens Run Road
Upper Glade, WV 26266

Kristin R. Murphy, Esq.
Office of the Solicitor
U.S. Department of Labor
61 Forsyth Street, Room 7T10
Atlanta, GA 30303
Murphy.kristin.r@dol.gov

Archith Ramkumar, Esq.
Office of the Solicitor
U.S. Department of Labor
201 12th Street South, Suite 401
Arlington, VA 22202
Ramkumar.Archith@dol.gov

April Nelson, Esq.
Office of the Solicitor
U.S. Department of Labor
201 12th Street South, Suite 401
Arlington, VA 22202-5452
Nelson.April@dol.gov

Melanie Garris
Office of Civil Penalty Compliance
Mine Safety and Health Administration
201 12th Street South, Suite 401
Arlington, VA 22202-5452
Garris.Melanie@DOL.GOV

Chief Administrative Law Judge Glynn Voisin
Federal Mine Safety & Health Review Commission
Office of the Chief Administrative Law Judge
1331 Pennsylvania Avenue, NW, Suite 520N
Washington, DC 20004-1710
GVoisin@fms SRC.gov