

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

July 13, 2021

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. WEVA 2019-0320
ADMINISTRATION (MSHA)	:	A.C. No. 46-09029-478458
	:	
v.	:	
	:	
MINGO LOGAN COAL, LLC	:	

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 March 18, 2019, the Commission received from Mingo Logan Coal, LLC a motion seeking to 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).

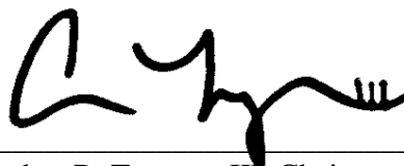
Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of 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 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).

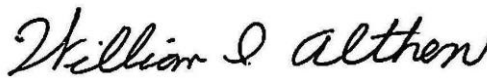
Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that a proposed assessment was delivered on December 3, 2018, and became a final order on January 2, 2019. Mingo Logan asserts that there is good cause to reopen this matter. The mine’s assistant safety manager timely prepared the proposed assessment form, marking ten specific citations for contest.¹ However, due to an inadvertent clerical error the completed form was not mailed. An internal audit on February 18, 2019 revealed the mistake. After learning of the issue, the manager contacted counsel to file a motion to reopen the proceeding.²

The Secretary does not oppose the request to reopen, but urges the operator to take steps to ensure that future penalty contests are timely filed.

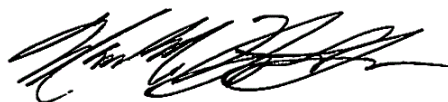
Having reviewed Mingo Logan’s request and the Secretary’s response, we find that Mingo Logan demonstrated that its failure to timely file contest was the result of an unintentional mistake. We find good cause, hereby reopen this matter, and remand the case to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission’s Procedural Rules, 29 C.F.R. Part 2700. Accordingly, consistent with Rule 28, the Secretary shall file a petition for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.



Arthur R. Traynor, III, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner

¹ Citation Nos. 9175236, 9178580, 9178758, 9178759, 9178584, 9178585, 9178588, 9178589, 9175246, and 9178596.

² Mingo Logan’s motion was accompanied by supporting affidavits signed by the employees involved.

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