

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, D.C. 20004-1710

May 28, 2024

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
 :
v. : Docket No. WEVA 2023-0336
 : A.C. No. 46-09495-566741
RAMACO RESOURCES, LLC :

BEFORE: Jordan, Chair; Althen, Rajkovich, Baker, and Marvit, 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 May 18, 2023, the Commission received from Ramaco Resources, LLC (“Ramaco”) 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), 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).

The Department of Labor's Mine Safety and Health Administration ("MSHA") indicates that the proposed assessment was delivered to the operator on December 1, 2022. The assessment became a final order of the Commission on January 2, 2023.

Ramaco states that when proposed assessments are received, they are immediately scanned and directed to the Ramaco's Vice President of Safety for a contest determination. Due to a malfunction in the company's email system, the Vice President did not receive the scanned assessment after it was routed to him via email.

According to the Secretary, on February 15, 2023, MSHA sent Ramaco a delinquency notice. On March 7, 2023, MSHA hand delivered to Ramaco a scofflaw letter regarding its unpaid civil penalties totaling \$51,714.57 for 61 citations issued at the mine in question. The letter warned that additional enforcement action would be taken if the operator did not remit payment within 30 days of receipt. Ramaco began paying some of its delinquent debt, which arrested the need for MSHA to take additional action. Ramaco then filed this motion to reopen and ceased making payments on its debt. Consequently, MSHA then resumed its enforcement actions and went on to issue a citation on June 7, 2023, for Ramaco's failure to pay its civil penalties. According to the citation, Ramaco paid \$18,505.44 leaving a balance of \$33,663.65 that they have not paid or made arrangements to pay. The request to reopen only pertains to eleven citations, amounting to \$29,076.59.

The Secretary opposes Ramaco's motion. She argues that the operator is responsible for maintaining and monitoring its internal scanning and email systems like any other internal system, and it has not explained how this electronic mail error does not reflect carelessness or unreliable office procedures. The Secretary notes that Ramaco has also neglected to explain how it failed to notice the absence of an assessment for a month's worth of penalties associated with 30 citations, issued on 10 different days. Ramaco should have anticipated an assessment for at least one of the citations and it should have been particularly careful given the large penalty amount involved. The Secretary also contends that Ramaco has not identified any steps it intends to take to prevent this error from occurring again. She argues that Ramaco has demonstrated a lack of good faith because it filed the motion to reopen only after MSHA attempted to collect the debt when it issued the scofflaw letter. The Secretary further notes that Ramaco waited three months after learning of the delinquency to file its motion to reopen and has not explained the delay. Finally, two of the underlying citations involved serious safety conditions that could have resulted in death by electrocution. The Secretary argues that Ramaco's motion to reopen should be denied with prejudice because the operator failed to establish good cause.

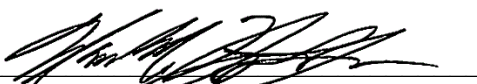
The Commission has held that where a failure to contest a proposed assessment results from an inadequate or unreliable internal processing system, the operator has not established grounds for reopening the assessment. *See, e.g., United Taconite, LLC*, 46 FMSHRC ___, slip op. at 3, No., LAKE 2023-0205 (Jan. 9, 2024); *Shelter Creek Capital, LLC*, 34 FMSHRC 3053, 3054 (Dec. 2012). Here, the error identified by Ramaco could suggest an unreliable system.

More importantly, however, Ramaco failed to file the motion to reopen within a reasonable time and did not explain its delay. The Commission has held that “[m]otions to reopen received within 30 days of an operator’s receipt of its first notice from MSHA that it has failed to timely file a notice of contest will be presumptively considered as having been filed within a reasonable amount of time.” *Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009); *United Taconite*, 46 FMSHRC ___, slip op. at 3. We have further held that motions to reopen filed more than 30 days after receipt of such information should include an explanation for why the operator waited so long to file for reopening and the “lack of [] an explanation is grounds for the Commission to deny the motion.” *Highland*, 31 FMSHRC at 1317. The operator’s May 18, 2023 motion to reopen was inexplicably filed three months after MSHA sent the February 15 delinquency letter and more than two months after MSHA hand-delivered to Ramaco a scofflaw letter on March 7, 2023.

We find that Ramaco has not asserted good cause for its failure to timely contest the proposed penalties. *See Moose Lake Aggregates, LLC*, 34 FMSHRC 1, 2-3 (Jan. 2012) (denying a motion to reopen when the operator had deficient internal procedures and failed to file motion within a reasonable time). The motion is denied with prejudice.


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William I. Althen, Commissioner


Marco M. Rajkovich, Jr., Commissioner


Timothy J. Baker, Commissioner


Moshe Z. Marvit, Commissioner

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