

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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August 4, 2026

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

v.

IKO PACIFIC, INC.

Docket No. WEST 2026-0271

A.C. No. 45-03419-640396

BEFORE: Rajkovich, Chair; Jordan, and Baker, 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. (2024) (“Mine Act”). On July 14, 2026, the Commission received from IKO Pacific, Inc. (“IKO”) 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 the proposed assessment was delivered on May 5, 2026, and became a final order of the Commission on June 4, 2026. Counsel for IKO asserts that the operator

notified him of its intent to contest all the penalties at issue on or about March 23, 2026. Because the proposed assessment could not be located, counsel began monitoring MSHA's Mine Data Retrieval System ("MDRS") for updates. IKO concedes that the proposed assessment was received on May 5, 2026, but that it was misdirected to the company's payment processing department, instead of being routed to IKO's safety department. IKO believed that the assessments were paid through administrative channels, however, MSHA has no record of receiving payment.

At some point, the MDRS was updated to show the final order date as June 29, 2026. IKO counsel attests that he relied on the date in MDRS in his attempt to file a timely contest. On June 24, 2026, counsel contacted MSHA to retrieve a copy of the assessment and filed its contest the same day. MSHA subsequently updated the MDRS to display June 4, 2026 as the correct final order date and notified the operator that the contest was untimely filed. The Secretary opposes reopening arguing that IKO has not established good cause for its failure to timely contest and that its internal processes are inadequate or unreliable.

In determining if the operator's failure to file was the result of a mistake or indicative of an inadequate or unreliable internal processing system, we look to a number of factors such as the operator's history of untimely contests, evidence of good faith attempts to comply with the statutory deadlines, and the promptness in which the problem was discovered and addressed by the operator. *See Wyo-Ben, Inc.*, 47 FMSRC 884 (Dec. 2025).

We have encouraged operators to proactively check the status of expected assessments on the MDRS and have found that such actions demonstrate good faith on the part of the operator. *See, e.g., Drake Cement, LLC*, 47 FMSHRC 722 (Aug. 2025); *Alleyton Res. Co., LLC*, 46 FMSHRC 309, 311 (May 2024). Moreover, the Commission has recognized 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). Here, counsel's prompt filing of a motion upon realizing its failure to timely file, in association with the operator's history having never filed a motion to reopen with the Commission, indicates that the failures were the result of a mistake rather than inadequate office procedures. *See, e.g., Heidelberg Materials US Cement LLC*, 45 FMSHRC 1004, 1005 (Dec. 2023) (quick action after recognizing an error militates in favor of reopening).

Having reviewed IKO's request and the Secretary's response, we find that the failure to timely contest was due to a mistake in misdirecting the proposed assessment to the wrong department and, in part, to a typographical error in the MDRS database. 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. 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.



Marco M. Rajkovich, Jr., Chair



Mary Lu Jordan, Commissioner



Timothy J. Baker, Commissioner

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