FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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January 5, 2026

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA) v. PATTON MINING LLC	Docket No. LAKE 2025-0199 A.C. No. 11-03182-613736

BEFORE: Rajkovich, Chair; Jordan, Baker, and Marvit, Commissioners

ORDER

BY: Rajkovich, Chair; Jordan, and Baker, Commissioners

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) ("Mine Act"). On April 4, 2025, the Commission received from Patton Mining LLC ("Patton Mining") 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 January 30, 2025, and became a final order of the Commission on March 3, 2025. A delinquency notification was received by the operator on March 12, 2025.

Patton Mining asserts that its failure to timely contest the proposed assessment was the result of an "administrative error" and a "simple mistake." Specifically, the operator states that the safety manager's supervisor inquired whether the safety manager had received any proposed assessments. The safety manager then searched his desk and discovered the missing proposed assessment. It was placed on his desk while he was not in the office and apparently had fallen between his desk and wall. By that time, it was March 7, 2025, and the deadline for contesting the assessment had passed.

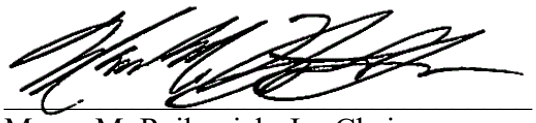
The supervisor received a delinquency notice on March 12, 2025. After locating the proposed assessment and receiving the delinquency notice, the safety manager and his supervisor commenced an investigation to determine why the proposed assessment was not timely processed. The supervisor also contacted counsel and requested that a motion to reopen be filed. The operator filed its motion to reopen soon after it completed the investigation into the circumstances surrounding the delinquency.

The operator contends that it has historically paid close attention to MSHA's Proposed Assessments and mistakes such as this are uncommon. In the future, when proposed assessments come in the mail, personnel at the mine are trained to put them in the tray on the safety manager's desk specifically designed for this purpose.

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.

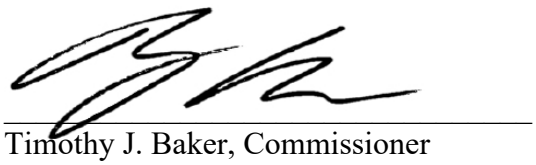
Having reviewed Patton Mining's request and the Secretary's response, we find that the operator's failure to timely contest the proposed assessment resulted from an "administrative error" and a "simple mistake." We note that the operator conducted an investigation to determine why the proposed assessment was not timely processed, and has trained personnel at the mine on the proper protocol to bring delivered assessments to the safety manager's attention. *Shelter Creek Capital, LLC*, 34 FMSHRC 3053, 3055 (Dec. 2012) (holding that operators must explain in detail what steps they have taken to ensure errors will not recur).

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



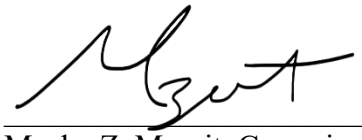
Timothy J. Baker, Commissioner

Commissioner Marvit, dissenting:

I write to disagree with the Majority in this case for the reasons set forth below.

In *Explosive Contractors*, 46 FMSHRC 965 (Dec. 2024), I dissented and explained that Congress did not grant the Commission the authority to reopen final orders under section 105(a) of the Mine Act. The Commission's repeated invocation of Federal Rule of Civil Procedure 60(b) cannot overcome the statutory language. However, in *Belt Tech*, I explained in my concurrence that "the Act clearly states that to become a final order of the Commission, the operator must have received the notification from the Secretary." 46 FMSHRC 975 (citing *Hancock Materials, Inc*., 31 FMSHRC 537 (May 2009)). Taken together, these opinions stand for the proposition that the Commission may not reopen final orders under its statutory grant, but an operator may proceed if it has not properly received a proposed order.

In the instant case, as the Majority recounts, the Commission's order became final under the language of section 105(a). The Majority, however, votes to reopen the case. The Mine Act has not granted us authority to reconsider final orders of the Commission as I set out more fully in *Explosive Contractors*. To the contrary, it has limited our authority to do so. Therefore, I respectfully dissent and would deny reopening.



Moshe Z. Marvit, Commissioner

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