FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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January 12, 2026

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA) v. NEW POINT STONE COMPANY, INC.	Docket No. LAKE 2025-0120 A.C. No. 12-01661-605042

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. (2024) ("Mine Act"). On January 22, 2025, the Commission received from New Point Stone Company, Inc. ("New Point"), a pro se operator, a motion seeking to reopen a penalty assessment, which became a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a). The Secretary does not oppose the motion.

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).

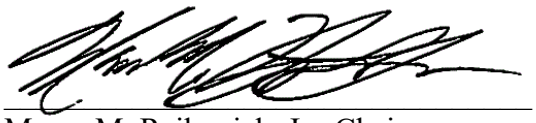
Records of the Department of Labor's Mine Safety and Health Administration ("MSHA") indicate that the proposed assessment was delivered on October 12, 2024, and became a final order of the Commission on November 12, 2024. On December 30, 2024, MSHA sent New Point a delinquency notice.

On October 29, 2024, New Point's Managing Partner states that he spoke with Melanie Garris in MSHA's Civil Penalty Compliance Division about an outstanding balance showing on the penalty assessment in question. He states that Ms. Garris indicated that "[t]hey had system issues." New Point maintains that the Notice of Contest was mailed via the United States Postal Service on the same day, October 29, 2024, to MSHA's Civil Penalty Office pursuant to the contest instructions. However, the Notice of Contest was not received by MSHA's Civil Penalty Compliance Office, and the operator received a delinquency notice on January 16, 2025. On January 17, its Managing Partner spoke with Garris at MSHA. He further claims that Garris called him on January 21, 2025, and told him to file a request to reopen. New Point filed its request to reopen on the following day.

New Point argues that it acted in good faith and followed the instructions on the notice of contest. It notes that it contacted the Chief of the Civil Penalty Compliance Office upon receiving notification that the penalty became delinquent. Finally, on January 21, 2025, the operator implemented a new procedure requiring that the Notice of contest forms be completed electronically or sent via certified mail to prevent this from happening in the future. The Secretary of Labor states that because New Point has shown good faith in addressing its delinquency in a timely manner, she does not oppose the motion. She states that although she does not oppose the motion, she reminds New Point to ensure that future contests are timely filed in accordance with MSHA's regulations and the Commission's procedural rules.

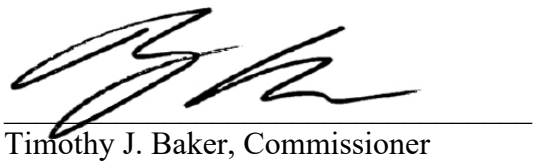
Upon notification that New Point's notice of contest had not been timely received by MSHA, the operator filed its motion to reopen within days. *See, e.g., Heidelberg Materials US Cement LLC*, 45 FMSHRC 1004, 1005 (Dec. 2023) (quick action after recognizing an error militates in favor of reopening). The operator has also modified its contest procedure to avoid this happening in the future. Lastly, there is no indication of bad faith on the operator's part, and the Secretary does not oppose reopening or dispute the facts asserted in the operator's motion. Having reviewed New Point's request and the Secretary's response, we find that the operator has sufficiently explained its failure to timely contest the citations at issue as the result of inadvertence, mistake, and excusable neglect. *See Victory Rock Texas, LLC*, 42 FMSHRC 785, 786 (Oct. 2020) (reopening where pro se operator states it timely returned its notice of contest, but provided no proof of mailing or delivery and the Secretary did not oppose).

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*, 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. 46 FMSHRC 965, 968 (Dec. 2024) (Marvit, M., dissenting). The Commission's repeated invocation of Federal Rule of Civil Procedure 60(b) cannot overcome the statutory language. However, in *Belt Tech, Inc.*, 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, 977 (Dec. 2024) (Marvit, M., concurring) (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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