

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

January 12, 2026

SECRETARY OF LABOR  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

v.

JW CONSTRUCTION COMPANY, INC.

Docket No. VA 2025-0025  
A.C. No. 44-07256-611822

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 30, 2025, the Commission received from JW Construction Company, Inc. (“JW Construction”) 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).

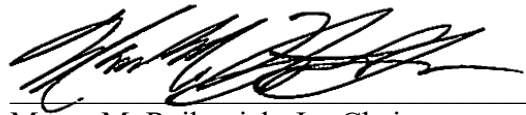
Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessment was delivered on December 23, 2024, and became a final order of the Commission on January 22, 2025.

JW Construction’s Safety Director, the person responsible for contesting the above-referenced citations/orders, was out of the office for periods of time during the Christmas and New Year holidays, as well as during a snow and ice storm that occurred in early January 2025. He states that he was unaware of the exact date the Assessment was received by the company but reviewed the assessment sometime after the Christmas holiday. Due to the holiday and weather disruptions, the Director did not make any determinations regarding the assessment until mid-January. JW Construction further states that during mid-January, it was advised by MSHA that it was opening a Section 110 investigation into a serious non-fatal accident that occurred at the mine and involved some of the citations/orders issued as a part of MSHA’s post-accident investigation. MSHA requested documents and interviews which re-directed the Safety Director’s attention to gathering documents, contacting counsel and participating in the scheduling of employee interviews.

On January 23, 2025, while holding section 110 interviews at JW Construction’s office, the Safety Director met with the operator’s counsel where he provided counsel with the penalty assessment to complete and file with MSHA. The contest of the assessment was filed with MSHA the following day. On January 28, 2025, counsel received correspondence from MSHA advising that a final order of the Commission had been entered in this case. Because JW Construction filed its motion to reopen eight days after the final order was entered and its contest just two days after issuance of the final order, the Secretary does not oppose the reopening of this assessment. However, the Secretary reminds the operator to ensure that future contests are timely filed in accordance with MSHA’s regulations and the Commission’s procedural rules.

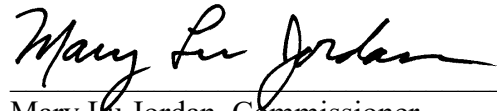
Having reviewed JW Construction’s request and the Secretary’s response, we find that the operator has sufficiently explained its failure to timely contest the citations at issue as the result of inadvertence and excusable neglect. *See Dyno Nobel*, 45 FMSHRC 998, 999 (Dec. 2023); *Road & Rail Serv.*, 46 FMSHRC 993, 994 (Dec. 2024). Additionally, the operator’s immediate filing of a motion to reopen after missing the deadline demonstrates a good faith effort to comply with the Commission’s requirements. *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).

In the interest of justice, we hereby reopen the penalty assessment in 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.



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Marco M. Rajkovich, Jr., Chair



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Mary Lu Jordan, Commissioner



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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.

A handwritten signature in black ink, appearing to read 'M. Marvit', is positioned above a horizontal line.

Moshe Z. Marvit, Commissioner

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