

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVE., N.W., SUITE 520N

WASHINGTON, DC 20004-1710

**January 12, 2026**

SECRETARY OF LABOR  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA)

v.

AMERICAN SODA, LLC

Docket No. WEST 2025-0115  
A.C. No. 48-01295-606412

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 December 11, 2024, the Commission received from American Soda, LLC (“American Soda”) a motion seeking to reopen a penalty assessment for Citation No. 9909737, 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 19, 2024, and became a final order of the Commission on November 18, 2024.

American Soda's Health and Safety Manager stated that, consistent with its procedure, upon receiving the proposed penalty assessment in October 2024, he directed the Senior Office Assistant to check the boxes to contest seven citations, including Citation No. 9909737. The Assistant completed the contest form and emailed it to MSHA around November 13, 2024. On December 9, 2024, the Safety Manager discovered that the Office Assistant had inadvertently neglected to check the box to contest Citation No. 9909737. American Soda immediately contacted its counsel and this motion to reopen was filed with the Commission two days later.

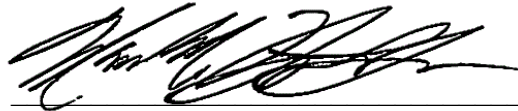
American Soda argues that a miscommunication occurred between the two employees, which led to its failure to check one box on the contest form. It notes that this failure was an oversight and the result of an inadvertent mistake. The operator insists that at all times it intended to contest the citation, which is evidenced by its request to MSHA to have a conference regarding the citation and by its immediate filing of this motion. The operator states that to correct its process, moving forward, the Safety Manager will review the contest forms before it is filed with MSHA.

The Secretary of Labor does not oppose the motion and notes that American Soda contested six citations and timely paid the remaining penalties, except the penalty amount for Citation No. 9909737. She notes that the operator has not filed any other recent motions to reopen, has a good history of timely contesting penalties, and provided an affidavit in support of its motion containing relevant details regarding its failure. Additionally, the Secretary states that the operator has identified specific steps it will take to prevent untimely contests in the future. Finally, the Secretary states that although the operator's explanation surrounding the miscommunication could have been more detailed, it does not oppose the motion, and she reminds American Soda to ensure that future contests are timely filed in accordance with MSHA's regulations and the Commission's procedural rules.

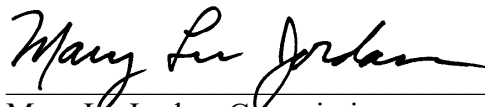
There is no evidence of prior instances of American Soda failing to timely contest a petition for assessment as a result of incorrectly completing the contest form. In fact, the Secretary states that the operator has a good history of timely contesting its penalty petitions. Additionally, American Soda quickly moved to file its motion to reopen upon learning of its mistake, and it has identified steps it will take to prevent untimely contests in the future. Finally, we recognize that in the past, we have found simple failure to check the correct box on a contest form to constitute "mistake" or "inadvertence" sufficient to establish good cause for reopening pursuant to Rule 60(b)(1). *See Kanawha Eagle Mining, LLC*, 44 FMSHRC 571, 572 (Aug. 2022).

Having reviewed American Soda'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 mistake, inadvertence, and excusable neglect. 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,

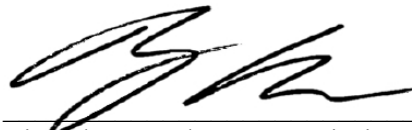
consistent with Rule 28, the Secretary shall file a petition for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.

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Marco M. Rajkovich, Jr., Chair

A handwritten signature in black ink, appearing to read 'Mary Lu Jordan', written over a horizontal line.

Mary Lu Jordan, Commissioner

A handwritten signature in black ink, appearing to read 'Timothy J. Baker', written over a horizontal line.

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.

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Moshe Z. Marvit, Commissioner

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