

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

WASHINGTON, DC 20004-1710

February 4, 2026

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

DELHUR INDUSTRIES, INC.

Docket No. CENT 2025-0269
A.C. No. 41-05396-615049

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 May 10, 2025, the Commission received from DelHur Industries Inc. (“DelHur”) 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 the proposed assessment was delivered to the operator’s local post office in West Richland, Washington on February 28, 2025. DelHur routinely received mail at a post

office box at this post office. On March 30, 2025, the proposed assessment was deemed a final order of the Commission because DelHur had not filed a Notice of Contest within 30 days.

On April 10, 2025, two weeks later, DelHur mailed its contest of the assessment. On April 24, 2025, MSHA notified the operator that because the contest was not timely filed, the assessment had become a final order of the Commission. Ex. C. to MTR. On May 10, 2025, a couple weeks later, the operator filed its request to reopen.

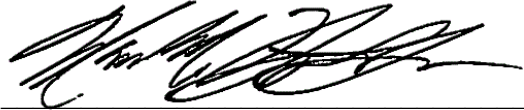
DelHur does not dispute that its local post office received the assessment on February 28, 2025. However, the operator asserts that the assessment was not delivered to or received by DelHur until March 12, 2025. Therefore, DelHur claims that its deadline to contest the assessment was April 12, not March 30. The Secretary of Labor does not oppose the request to reopen.

We note that the motion to reopen was timely filed on May 10, approximately two weeks after MSHA notified DelHur that the assessment had become a final order. The Commission has previously held 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, the motion to reopen was filed within 30 days after MSHA notified the operator that it had failed to timely file a contest. Therefore, the motion was filed within a reasonable amount of time.

Moreover, we note that the operator’s contest was mailed on April 10, within two weeks of the assessment becoming a final order. As the operator mistakenly believed that the filing deadline was April 12, this indicates a good faith effort to timely contest the assessment. The Secretary also notes that the operator has not filed any other recent requests to reopen, and that the operator has a history of timely contesting assessments.

Having reviewed Del Hur’s request and the Secretary’s response, we find that the operator has demonstrated good cause for its failure to timely respond and acted in good faith by timely filing its request to reopen. In the interest of justice, we hereby reopen this matter and

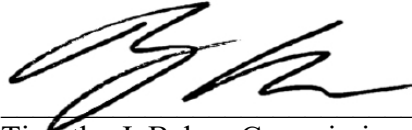
remand it to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700. Accordingly, consistent with Rule 28, the Secretary shall file a petition for assessment of penalty within 45 days of the date of this order. *See* 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.

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

Moshe Z. Marvit, Commissioner

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