

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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February 10, 2026

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

CYBER SQUARE

Docket No. CENT 2025-0127
A.C. No. 16-01613-609259

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 17, 2025, the Commission received from Cyber Square (“Cyber”) 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). 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 November 5, 2024.

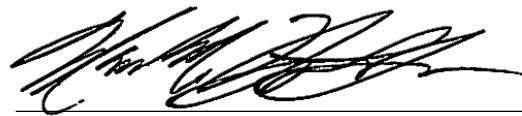
According to Cyber, in early November it received two letters from MSHA several days apart containing identical proposed penalty assessments (Assessment No. 000602244). The Assessment totaled \$610 for two citations and were not contested. On December 18, 2024, Cyber learned that Assessment No. 000609259, which it had no record of receiving, had also been issued around the same time for citations that it had received in May 2024. Specifically, Cyber learned of the missing assessment when it received another proposed assessment showing the May citations as having an outstanding balance totaling \$4,084. The operator then saw that the citations were showing as final orders on MSHA's Data Retrieval system. Proposed Penalty Assessment No. 000609259 contained three citations that Cyber intended to contest and that had already been the subjects of an MSHA conference.

Upon realizing Assessment No. 000609259 was unaccounted for, Cyber immediately emailed MSHA to inquire and began an internal search for the document but was unable to locate it. On December 19, 2024, MSHA emailed a copy of the original Assessment to the operator and informed Cyber that it would need to file a motion to reopen.

Cyber states that it is unclear whether MSHA inadvertently sent Assessment No. 000602244 twice and failed to send Assessment No. 000609259 as intended, or whether the operator received the second assessment and inadvertently lost it. It states that it has never filed a contest late and at all times intended to contest these citations. Due to the inadvertent error of sending the same assessment twice and Cyber's inability to locate Assessment No. 000609259, the Secretary does not oppose the reopening of this assessment. However, the Secretary reminds Cyber to ensure that future contests are timely filed in accordance with MSHA's regulations at 30 C.F.R. § 100.7 and the Commission's procedural rules and that she may oppose future requests to reopen.

We note that the motion to reopen was timely filed. The Commission has 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); *Cobleskill Stone Products, Inc.*, 47 FMSHRC 192, 193 (Mar. 2025). Here, the motion to reopen was filed on January 17, 2025, within 30 days of its December 18, 2024 email conversation with MSHA and its December 19, 2024 receipt of the copy of the assessment.

Having reviewed Cyber's request and the Secretary's response, we conclude that Cyber has demonstrated good cause to reopen this final order. 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), and the operator provided no affirmative proof that it did not receive the order. 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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