FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710

March 21, 2025

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), v. ENVIROTECH DRILLING, LLC	Docket No. WEST 2024-0121 A.C. No. 26-02081-593042

BEFORE: Jordan, Chair; Baker and Marvit, Commissioners

ORDER

BY: Jordan, Chair, and Baker, Commissioner

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) ("Mine Act"). On August 14, 2024, the Commission received from Envirotech Drilling, LLC ("Envirotech") a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On April 8, 2024, the Chief Administrative Law Judge issued an Order to Show Cause in response to Envirotech's perceived failure to answer the Secretary of Labor's February 7, 2024, Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on May 9, 2024, when it appeared that the contractor had not filed an answer within 30 days.

The Judge's jurisdiction in this matter terminated when the default occurred. 29 C.F.R. § 2700.69(b). Under the Mine Act and the Commission's procedural rules, relief from a Judge's decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2)(A)(i); 29 C.F.R. § 2700.70(a). If the Commission does not direct review within 40 days of a decision's issuance, it becomes a final decision of the Commission. 30 U.S.C. § 823(d)(1). Consequently, the Judge's order here became a final decision of the Commission on June 18, 2024. MSHA mailed the contractor a delinquency notice on July 24, 2024.

Envirotech contested the initial proposed assessment on January 31, 2024. It asserts that it received no correspondence from MSHA in the following weeks. Envirotech emailed MSHA on February 23 to request an update and was informed on February 26 that its request was being

processed. The contractor asserts that it received no further correspondence regarding the assessment until the July delinquency letter.[1]

The Secretary opposes the request to reopen. She challenges Envirotech's claim that it received no correspondence regarding the assessment, noting that the Secretary's Penalty Petition (February 7, 2024) and the Judge's Show Cause Order (April 8, 2024) were properly served on Envirotech's Safety Manager. She further asserts that Envirotech has not explained its failure to monitor or pursue its case after the February communication. However, in light of Envirotech's history of timely payment and apparent confusion regarding the contest process, the Secretary requests that the Commission deny Envirotech's motion *without* prejudice to afford the contractor an opportunity to satisfy the requirements for reopening.

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"); *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993). 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 will be permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

A party seeking to reopen a final penalty bears the burden of showing that it is entitled to such relief, through a detailed explanation of its failure to timely respond. *Revelation Energy, LLC*, 40 FMSHRC 375, 375-76 (Mar. 2018). At a minimum, the applicant must provide all known details and a clear explanation that accounts, to the best of the operator's knowledge, for the failure to submit a timely response. *Higgins Stone Co.*, 32 FMSHRC 33, 34 (Jan. 2010). General assertions or conclusory statements are insufficient. *Southwest Rock Prod., Inc.*, 45 FMSHRC 747, 748 (Aug. 30, 2023); *B & W Res., Inc*., 32 FMSHRC 1627, 1628 (Nov. 2010).

Envirotech claims that between February and July of 2024 it received no correspondence regarding the assessment other than a single email from MSHA stating that its request was being processed. However, the Secretary's Penalty Petition and Judge's Show Cause Order were sent to Envirotech's Safety Manager on February 7 and April 8, 2024, respectively. Records indicate that the Petition and Order were sent to the same email address that the Safety Manager provided with his initial contest in January 2024, used to communicate with MSHA in February 2024, and provided with his motion to reopen in August 2024, indicating that the address was functional and in use during the relevant time.

Envirotech does not assert that it had any technical difficulties with its email system or otherwise explain the Safety Manager's failure to discover and respond to the Petition and Order. *Cf. Western Refractory Constr., Inc.*, 46 FMSHRC 871 (Oct. 2024) (reopening where a penalty

[1] Envirotech also asserts that it learned during subsequent calls with MSHA that a conference had been held on May 25, 2024, without the contractor's knowledge or participation. The Secretary states that no such conference was held, and that it has been unable to ascertain whom the contractor may have spoken to during the alleged phone calls.

petition was overlooked due to an isolated non-recurring instance of mail being misrouted to a spam folder); *Liggett Mining, LLC*, 33 FMSHRC 153 (Feb. 2011) (finding an operator failed to adequately justify reopening where it merely stated that it could not confirm its emails had been received). Envirotech's motion does not adequately explain its failure to respond to the Petition and Order, particularly in light of the documents' apparent service on the correct email address.[2]

The Secretary acknowledges that Envirotech may have been confused regarding the contest process. *E.g.*, *Highway Materials, Inc.*, 45 FMSHRC 593 (July 2023) (reopening where the operator was unfamiliar with an aspect of the contest process). Additionally, Envirotech's confusion may have been exacerbated by MSHA's February 26 email informing the contractor that its request was being processed. Nevertheless, we cannot reopen proceedings without a detailed explanation of the party's failure to timely respond. Having reviewed Envirotech's request and the Secretary's response, we find that Envirotech has not provided sufficient explanation to justify reopening the captioned proceeding.

Accordingly, Envirotech's motion to reopen is DENIED.

Mary Lu Jordan, Chair

Timothy J. Baker, Commissioner

[2] Envirotech's motion also fails to explain why, according to MSHA's Mine Data Retrieval System, the relevant penalties appear to have been paid.

Commissioner Marvit, concurring:

I write to agree 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, 977 (Dec. 2024) (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 operator failed to answer the Judge's Order to Show Cause and it became a final decision under the Act. Similar to section 105(a), the Act here provides a clear directive on the grounds for review of a final decision. 30 U.S.C. § 823(d)(1)-(d)(2)(A)(i). The Commission declined to exercise its authority to review the decision within the period allowed. As such, I do not believe that Rule 60(b) should be invoked under these circumstances either, similar to my reasoning in the cases cited above. Though I believe the Commission lacks the authority to consider motions to reopen, I concur with the Majority in denying reopening in this matter

Moshe Z. Marvit, Commissioner

Distribution:

Tim Pruitt, Safety Manager
Envirotech Drilling LLC
900 East 4th St.
Winnemucca, NV 89445
tim.pruitt@pruittsafety.com
admin@envirotechdrilling.com

Thomas A. Paige, Esq.
Office of the Solicitor
U.S. Department of Labor
Division of Mine Safety and Health
200 Constitution Avenue NW, Suite N4420-N4430
Washington, DC 20210
Paige.Thomas.a@dol.gov

Emily O. Roberts, Esq.
Division of Mine Safety and Health
Office of the Solicitor
200 Constitution Avenue NW Suite N4420 – N4430
Washington, DC 20210
roberts.emily.o@dol.gov

Melanie Garris
US Department of Labor/MSHA
Office of Assessments, Room N3454
200 Constitution Ave NW
Washington, DC 20210
Garris.Melanie@DOL.gov

Chief Administrative Law Judge Glynn F. Voisin
Office of the Chief Administrative Law Judge
Federal Mine Safety Health Review Commission
1331 Pennsylvania Avenue, NW Suite 520N
Washington, DC 20004-1710
GVoisin@fmshrc.gov