

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.

CROELL, INC.

Docket No. WEST 2024-0333
A.C. No. 48-01698-601070

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 September 17, 2024, the Commission received from Croell, Inc. (“Croell”) 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 that the proposed assessment was delivered on June 12, 2024, and became a

final order of the Commission on July 12, 2024. A delinquency letter was sent to the operator on August 27, 2024.

Croell asserts that it intended to contest two of the six citations contained in the proposed assessment, but mistakenly mailed the paperwork to the wrong address. Contest paperwork must be mailed to MSHA's Civil Penalty Compliance Office in Arlington, Virginia, while payments for uncontested citations must be mailed to MSHA's Lock Box in St. Louis, Missouri. On June 24, 2024, Croell mistakenly mailed its contest paperwork to the St. Louis address, along with its payment for the four uncontested citations. After receiving the delinquency letter, the operator realized its error and moved to reopen the final assessment.

The Secretary does not oppose the request to reopen, and notes that the operator has no previous history of untimely contests or delinquent penalties. However, the Secretary notes that the instructions provided with every proposed assessment clearly state that contest forms must be sent to the Civil Penalty Compliance Office, and urges the operator to take steps to ensure future penalty contests are properly filed.

We note that Croell clearly attempted to timely contest the proposed assessment. The contest form was mailed on June 24, 2024, approximately three weeks before the assessment became final. While the operator mailed its contest form to the wrong address, this appears to be the operator's first such error. We also note that Croell timely moved to reopen the assessment approximately three weeks after receiving the delinquency letter. *Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009) (motions received within 30 days of an operator's first notice from MSHA that it has failed to timely file a notice of contest have presumptively been filed within a reasonable amount of time).

Having reviewed Croell's request and the Secretary's response, we find that Croell's failure to timely contest the assessment was the result of inadvertence. We also note that the operator 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.



Mary Lu Jordan, Chair



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, 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 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.



Moshe Z. Marvit, Commissioner

Distribution:

Bill Baxendale
EHS Coordinator
Croell Inc.
230 Croell Dr., PO Box 1352
Sundance, WY 82729
bill.baxendale@croell.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