

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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April 1, 2025

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),

v.

HEIDELBERG MATERIALS
NORTHEAST, LLC

Docket No. PENN 2024-0094
A.C. No. 36-00091-600528

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 28, 2024, the Commission received from Heidelberg Materials Northeast, LLC (“Heidelberg”) 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).¹

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

¹ Heidelberg specifically seeks to reopen seven of the citations and penalties in the assessment: Citation Nos. 9854178, 9854179, 9854181, 9854182, 9854197, 9854198, and 9854200.

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 3, 2024, and became a final order of the Commission on July 3, 2024. A delinquency notice was mailed to the operator on August 19, 2024.

Heidelberg asserts that the proposed assessment was not timely contested due to an inadvertent routing error. The operator explains that mail from MSHA is normally signed for by the office manager and forwarded to the safety coordinator at the regional corporate office. The safety coordinator then distributes the mail to the area manager responsible for the relevant mine and notifies the area manager that mail from MSHA has been delivered. The assessment is then processed by the area manager. Heidelberg further explains that its safety coordinator had only started working at the regional office in April 2024, and that the area manager responsible for the Glen Mills Plant is sometimes away from his office for extended periods of time due to his work.

Heidelberg asserts that in this instance, the safety coordinator failed to notify the area manager of the assessment. The area manager discovered the assessment on his desk when he returned to his office in late July 2024. He learned that it had been on his desk for approximately one week, and assumed the deadline to contest the assessment was August 20, 2024. He filed the contest paperwork on August 20, and learned it was untimely the next day upon receiving MSHA’s response. The operator claims the new safety coordinator’s failure to notify the area manager of the assessment caused the area manager to mistake the filing deadline, and states that it will provide the safety coordinator with refresher training.

The Secretary opposes the motion to reopen. She asserts that the operator’s failure to timely contest the assessment was not the result of a single excusable mistake, but rather a series of mistakes indicating an inadequate or unreliable processing system. She further asserts that the operator failed to adequately explain certain facts, such as the delay between the assessment’s receipt in early June and its arrival on the area manager’s desk in mid-July.

We have long held that where a failure to timely contest an assessment results from an inadequate or unreliable internal processing system, the operator has not established grounds for reopening the assessment. *E.g., Georgetown Sand & Gravel, Inc.*, 46 FMSHRC 988, 990 (Dec. 2024); *Pinnacle Mining Co. LLC*, 30 FMSHRC 1066, 1067 (Dec. 2008). Here, Heidelberg’s failure to timely contest the assessment was not the result of a single error by a single employee, but a series of errors by at least two individuals. These include the apparent six-week delay in delivering the assessment to the area manager, the safety coordinator’s failure to notify the area manager of the assessment, and the area manager’s miscalculation of the filing deadline.² This

² The Secretary asserts that the operator’s errors also included failing to properly train the safety coordinator and failing to have processing redundancies in place given the area manager’s expected time away from the office.

series of mistakes indicates an inadequate or unreliable processing system. *See Lopke Quarries, Inc.*, 46 FMSHRC 421, 423 (July 2024).

In turn, Heidelberg has failed to adequately justify each individual error that led to the failure to timely contest the assessment. A party seeking to reopen a final penalty must provide 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). First, the operator has not adequately explained how or why the assessment reached the area manager's desk in mid-July, six weeks after it was received at the regional corporate office. Heidelberg notes that the safety coordinator is tasked with distributing assessments, and that the area manager learned the assessment had arrived one week prior to its discovery in late July. However, it also asserts that the internal routing process succeeded because the assessment reached the proper area manager. Mot. at 5. It is unclear whether the safety coordinator failed to promptly mail the assessment, whether the assessment promptly reached the relevant office but was not delivered to the area manager's desk, or whether the area manager's belief as to when the assessment arrived on his desk was incorrect.

Second, Heidelberg asserts that the safety coordinator's failure to notify the area manager was excusable because he was a new employee. However, operators have a responsibility to properly train all personnel who handle proposed assessments. If a new employee's error arises from inadequate training, that is evidence of an inadequate or unreliable processing system.³ *Kentucky Fuel Corp.*, 38 FMSHRC 632, 634 (Apr. 2016). We note that Heidelberg's safety coordinator started in mid-April but still had not notified the area manager of the assessment by late July. This suggests that he was still unfamiliar with his duties after three months, which indicates inadequate training. *Id.* (finding that a safety director had not been adequately trained, indicating an inadequate processing system, where he had been in his position for two months prior to the error).

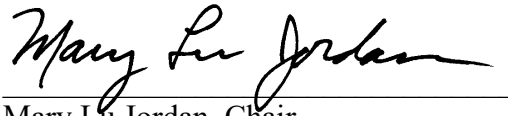
Third, Heidelberg has not established that the area manager's miscalculation of the filing deadline was excusable. Heidelberg states that the area manager "learned" the assessment had arrived on his desk one week before he discovered it in late July and assumed the filing deadline was August 20, 2024. One possible interpretation is that the area manager mistakenly calculated the 30-day deadline based on the assessment's date of arrival on his desk, rather than its receipt by the operator. However, Heidelberg does not identify the assessment's actual date of arrival or explain how the area manager determined the date of arrival or calculated the deadline. Moreover, the operator has not established that such a mistake (if it occurred) was excusable. We note that the area manager was not a new employee and was presumably familiar with the

³ Heidelberg notes that the Commission has previously reopened an assessment that was not timely contested due to a single error by a new low-level employee. *Vulcan Electr. Serv.*, 45 FMSHRC 597, 598 (July 2023). This does not conflict with *Kentucky Fuel, supra*, as an error by a new employee does not inherently reflect inadequate training. Regardless, as discussed above, this was not the result of a single error by a new employee. In addition to the safety coordinator's mistake(s), the area manager miscalculated the filing deadline. There is no indication that the area manager was a new employee.

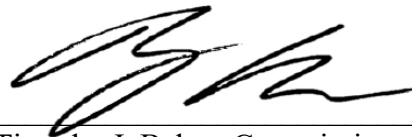
operator's contest process. He should have known that assessments were first delivered to the regional corporate office before being distributed to area managers.⁴

The Commission acknowledges that Heidelberg provided some detail, and that it promptly filed its motion to reopen upon learning that the assessment had not been timely contested. *Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009). However, that is insufficient to overcome the grounds for denial in this case. Having reviewed Heidelberg's request and the Secretary's response, we find that the operator's failure to timely contest the assessment arose from a series of mistakes that reflect an inadequate or unreliable processing system and therefore do not justify relief.

Accordingly, we deny Heidelberg's motion.



Mary Lu Jordan, Chair



Timothy J. Baker, Commissioner

⁴ The Secretary asserts that the assumption of an August 20 deadline was unreasonable in part because the assessment was dated (May 30, 2024) on virtually every page. We note that contest deadlines are calculated from date of receipt, and May 30, 2024, was the date of issuance. However, we take the Secretary's point that the discrepancy between a May 30 issuance and a "late July" arrival should have given the area manager pause.

Commissioner Marvit, concurring:

I write to agree 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 received the final order. The Majority denies reopening in its opinion because the operator has not alleged good cause or provided a factual accounting for its failure to timely contest the penalties. 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

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