

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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April 7, 2025

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

v.

COOK STONE COMPANY, LLC

Docket No. SE 2024-0152

BEFORE: Jordan, Chair; Baker and Marvit, Commissioners

ORDER

BY: Chair Jordan and Commissioner Baker

This case arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On May 13, 2024, the Commission received from Cook Stone Company (“Cook Stone”) 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 section 105(a) orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure under which, for example, a party could be entitled to relief from a final order of the Commission on the basis of mistake, inadvertence, or excusable neglect. *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).

MSHA's records indicate that the proposed assessment was delivered on or around January 25, 2024, and became a final order of the Commission 30 days later when it was not contested by the operator. MSHA sent the operator a delinquency notice on May 3, 2024.

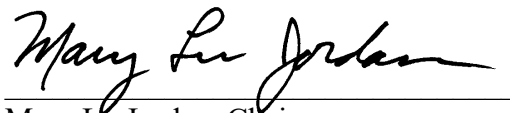
The Secretary opposes Cook Stone's request to reopen, arguing that the operator failed to establish good cause for its failure to timely file. According to the Secretary, the operator's failure to timely file was the result of inadequate or unreliable internal procedures.

Cook Stone maintains that it timely forwarded the proposed assessment to outside counsel on January 25, 2024, with a request to contest it. Cook Stone represents that counsel's office neglected to file the form as a result of an intra-firm communication error. Specifically, as demonstrated in the emails attached to its motion, an attorney in the office confused Cook Stone's assessment with the assessment of a separate operator. She mistakenly represented that she had filed to contest Cook Stone's assessment when she had not. CS Ex 1, 2. Due to this miscommunication, Cook Stone's contest was not timely filed.

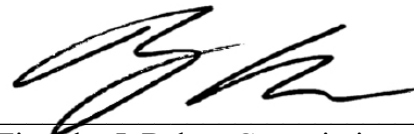
Prior to receiving the proposed assessment, Cook Stone filed pre-penalty notices of contest for the five citations at issue (Docket Nos. SE 2024-0052, SE 2024-0053, SE 2024-0054, SE 2024-0055 and SE 2024-0056), indicating an intent to contest the proposed civil penalties.

Furthermore, 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). Here, the motion to reopen was filed ten days after MSHA sent the operator a delinquency notice.

Having reviewed Cook Stone's request and the Secretary's response, we find that Cook Stone made a good faith effort to timely file and that its failure to file was the result of a mistake. 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

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