

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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April 8, 2025

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

HOLCIM (US) INCORPORATED

Docket No. SE 2024-0173
A.C. No. 01-02343-594806

BEFORE: Jordan, Chair; Baker, and Marvit, Commissioners

ORDER

BY: Jordan, Chair, and Baker, Commissioners

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On June 20, 2024, the Commission received from Holcim (US) Incorporated (“Holcim”) 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 to Holcim on March 6, 2024,

and became a final order of the Commission on April 5, 2024. On May 21, 2024, MSHA sent Holcim a delinquency letter.

Holcim seeks to reopen the assessment so that it may contest the penalties associated with 17 citations. The operator explains that its Plant Manager and Safety Manager never received Assessment No. 000594806 from the administrative assistant tasked with retrieving and distributing mail. Holcim states that it received a different penalty assessment on approximately April 16, 2024, that contained some proposed penalties from the inspection, and that it expected subsequent assessments to follow. It states that on June 6, 2024, the Safety Manager discovered that Assessment No. 000594806 had been issued when checking MSHA's Mine Data Retrieval System following a conference with MSHA. Holcim's counsel contacted MSHA's Civil Penalty Compliance Office, which informed counsel that Assessment No. 000594806 had been delivered on March 6 and provided counsel with a copy of the subsequent delinquency letter. The operator states that there is no indication at the mine that the delinquency letter was received.

Holcim further explains that during the relevant time, the administrative assistant had been terminated from her position and another employee temporarily had assumed the role of mail distribution along with her other regular duties. It states that there is now a new person permanently assigned to the administrative assistant position, and that the person has been trained in proper and timely mail pickup and handling procedures in order to prevent a recurrence of what appears to have been a mistake in handling the mail. The Secretary does not oppose Holcim's motion to reopen.¹

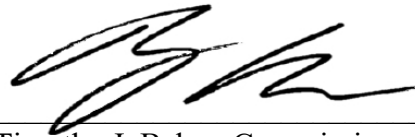
Upon consideration of the filings, including the Secretary's non-opposition, we find that the operator demonstrated a good cause reason for missing the filing deadline. *See, e.g., River View Coal, LLC*, 35 FMSHRC 5 (Jan. 2013) (reopening when temporary staff were unaware of the timely nature of the assessment). The operator's prompt filing of a motion to reopen after missing the deadline demonstrates a good faith effort to comply with the Commission's requirements. *See, e.g., Heidelberg Materials US Cement LLC*, 45 FMSHRC 1004, 1005 (Dec. 2023) (quick action after recognizing an error militates in favor of reopening).

¹ The Secretary filed an unopposed motion for an extension of time to file his response. We hereby grant the motion.

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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