

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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April 8, 2025

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEST 2024-0268
v.	:	A.C. No. 04-00157-595053
	:	
MITSUBISHI CEMENT CORPORATION	:	
	:	

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 June 13, 2024, the Commission received from Mitsubishi Cement Corporation (“Mitsubishi”) 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 Mitsubishi received an assessment proposing penalties for 21 citations and orders on March 11, 2024. On April 2, 2024, MSHA deposited a partial payment from Mitsubishi for penalties associated with 8 of the 21 citations. The proposed penalty assessment for the remaining 13 citations became a final order of the Commission on April 10, 2024. On May 28, 2024, MSHA sent Mitsubishi a delinquency letter.

Mitsubishi claims that on approximately March 25, 2024, the operator’s Safety Superintendent mailed two packages to MSHA. The operator explains that it marked the penalties of 13 citations and orders as contested on the assessment form and included the form in both packages. MTR at 5. In addition, it issued a check in the amount of \$1,268 for eight penalties it was paying. Mitsubishi placed the actual check in one package, and a copy of the check in the second package. *Id.* at 2, 5. The operator explains that the package with the actual check was sent to MSHA’s Lock Box in St. Louis, Missouri, while the package with the copy of the check was sent to MSHA’s address in Arlington, Virginia.

The Secretary does not oppose the motion to reopen. She states that MSHA did not receive a copy of Mitsubishi’s Notice of Contest at its office in Arlington, Virginia. The Secretary further submits that “Mitsubishi’s Notice of Contest was in the same package as the issued check for the 8 uncontested citations which were sent to MSHA’s St. Louis, Missouri Lockbox,” and concludes that Mitsubishi sent its payment and Notice of Contest by mistake to MSHA’s Lockbox. Resp. at 2. The Secretary explains that she does not oppose the motion to reopen because Mitsubishi took the initiative to address MSHA’s non-receipt of its contest and has a “respectful payment history with MSHA.” *Id.*

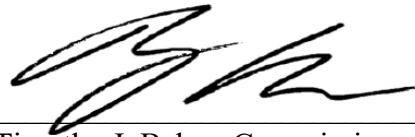
As the Commission has previously recognized, payments for uncontested citations must be mailed to MSHA’s address in St. Louis, while contests of proposed assessments must be mailed to MSHA’s address in Arlington. *Westmoreland Absaloka Mining, LLC*, 45 FMSHRC 818, 819 (Sept. 2023). Here it appears that Mitsubishi prepared two packages that included copies of its contest of proposed assessments. One package also included a check for uncontested citations, and that package was mailed to St. Louis. The other package included the contests and a copy of the check, and that package was sent to Arlington. The operator’s filing of nearly identical packages may have “confused MSHA’s system.” *See, e.g., Giant Cement Co.*, 46 FMSHRC 305, 306 (May 2024). In any event, it appears that the operator’s contest package was not received by MSHA in its Arlington office.

Upon consideration of the filings, including the Secretary’s non-opposition, we find that Mitsubishi acted in good faith. *See, e.g., DeAtley Crushing Co.*, 46 FMSHRC 632, 633 (Aug. 2024) (finding that good faith and timeliness supported reopening).

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, Inc.*, 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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