

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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WASHINGTON, DC 20004-1710

**June 7, 2023**

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. CENT 2022-0253
ADMINISTRATION (MSHA)	:	A.C. No. 13-00032-559242
	:	
v.	:	
	:	
MILLER CONTRACTING SERVICES,	:	
LLC	:	

BEFORE: Jordan, Chair; Althen, Rajkovich, and Baker, Commissioners

**ORDER**

BY THE COMMISSION:

This case arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On September 26, 2022, the Commission received from Miller Contracting Services, LLC (“Miller”), a motion to reopen a final order of the Commission pursuant to section 105(a) of the 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 the operator on July 26, 2022, and became a final order of the Commission on August 25, 2022. Miller filed a short *pro se* motion to reopen stating that it timely filed to contest the penalty for Citation No. 9488618 and attributing MSHA’s non-receipt of the contest to the form becoming lost in the mail. MSHA states that it received a partial payment toward the penalty on August 25, 2023.

We note that although Miller’s motion lacks details and documentation regarding the operator’s attempt to timely file, Miller promptly filed to reopen shortly after learning that MSHA did not receive its contest form. Specifically, Miller filed its motion 32 days after the citation became a final order of the Commission. The Secretary does not oppose the operator’s request.<sup>1</sup>

Having reviewed Miller’s request and the Secretary’s response, we find that Miller has demonstrated that its failure to timely 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.

  
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Mary Lu Jordan, Chair

  
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William I. Althen, Commissioner

  
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Marco M. Rajkovich, Jr., Commissioner

  
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Timothy J. Baker, Commissioner

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<sup>1</sup> The Secretary represents that the operator timely contested the imminent-danger order that was issued in association with Citation No. 9488618. The parties further represent that they have reached a settlement agreement involving the imminent-danger order and the citation.

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