

**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	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEVA 2023-0043
v.	:	A.C. No. 46-09550-560358
	:	
MARFORK COAL COMPANY, LLC,	:	

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

**ORDER**

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On November 4, 2022, the Commission received from Marfork Coal Company, LLC (“Marfork”), 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 on August 17, 2022. On September 16, 2022, the assessment became a final order of the Commission.

Marfork states that it emailed a notice of contest to MSHA, on September 26, 2022—after the order had become final—noting its intent to contest seven citations. The Secretary received a check directed toward the proposed assessment in the amount of \$5,224 on October 5, 2022.<sup>1</sup>

Marfork then filed the subject motion to reopen the seven citations and penalties that it had tried to contest. Marfork states that an executive assistant at Marfork’s parent company, Alpha Metallurgical Resources, Inc., made a mistake; she neglected to change the assessment status to “Ready for Review” after logging it into the company’s internal processing system. As a result, the safety director did not review the citations until September 19, 2022, three days after the civil penalty assessment had become a final order of the Commission. Marfork promises that “[i]n the future, [the executive assistant] will more timely move the Proposed Assessment from ‘New’ to ‘Ready for Safety Review,’ so that the Safety Department has adequate time to contest the violations well within the 30-day period.” Mot. at 3.

The Secretary opposes the operator’s motion to reopen. The Secretary represents that the operator has not established good cause for its failure to timely contest the proposed assessment, but instead has identified uncorrected inadequate internal procedures which in the recent past have contributed to its failure to timely contested other proposed assessments.

In fact, several months prior to filing this motion, Alpha cited to the *exact same* clerical error in a motion to reopen filed by a different subsidiary. On June 27, 2022, Alpha represented to the Commission that Mammoth Coal Company failed to timely contest a proposed assessment because the same administrative assistant inadvertently neglected to change the proposed assessment status to “Ready for Safety Review” in the operator’s internal processing system.<sup>2</sup> In granting Mammoth’s motion to reopen, the Commission relied on “[t]he operator[’s] promise[ ] that, in the future, the executive assistant will timely move all proposed assessments to ‘Ready for Review’ status.” *Mammoth Coal Co.*, Docket No. WEVA 2022-0426 (March 13, 2023) at 2.

In opposing Marfork’s motion, the Secretary argues that “[t]he Commission should not reward operators who represent to the Commission that they have changed their procedures, but in fact have not.” Sec’y Response at 6.

The Commission has made it clear that where a failure to contest a proposed assessment results from an inadequate or unreliable internal processing system, the operator has not established grounds for reopening the assessment. *Shelter Creek Capital, LLC*, 34 FMSHRC

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<sup>1</sup> Marfork’s payment of \$5,224 equals the total civil penalty amount for the 13 unmarked penalties on the late filed contest form. Exhibit A. The Secretary applied Marfork’s payment toward the first two citations listed chronologically on the proposed assessment form. *Id.*

<sup>2</sup> The Secretary represents that according to both motions to reopen the same Alpha personnel are responsible for processing proposed assessments for Marfork and Mammoth.

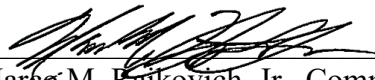
3053, 3054 (Dec. 2012); *Oak Grove Res., LLC*, 33 FMSHRC 103, 104 (Feb. 2011); *Double Bonus Coal Co.*, 32 FMSHRC 1155, 1156 (Sept. 2010); *Highland Mining Co.*, 31 FMSHRC 1313, 1315 (Nov. 2009); *Pinnacle Mining Co.*, 30 FMSHRC 1066, 1067 (Dec. 2008); *Pinnacle Mining Co.*, 30 FMSHRC 1061, 1062 (Dec. 2008).

Alpha was put on specific notice of deficiencies in its internal processing system but failed to take adequate actions to remedy these deficiencies for months, despite promises to correct the problem. The operator did not reply to the Secretary's response.

We find that Marfork has not asserted good cause for its failure to timely contest the proposed penalties. See *Lone Mountain Processing, Inc.*, 35 FMSHRC 3342, 3345 (Nov. 2013) (denying a motion to reopen when the operator was put on notice of and neglected to fix problems with its internal procedures). The motion is DENIED WITH PREJUDICE.

  
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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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