

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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July 1, 2025

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

MDI MINING

Docket No. WEST 2025-0154
A.C. No. 02-02633-602391

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

ORDER

BY: Chair Jordan and Commissioner Baker

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On February 12, 2025, the Commission received from MDI Mining 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).

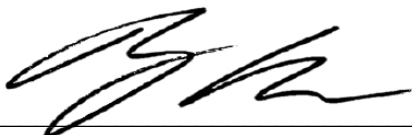
We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“*JWR*”). In evaluating requests to reopen final orders, the Commission 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).

In its motion to reopen, MDI Mining represents that on May 31, 2024, it filed notices to contest Citation No. 9908246, Order No. 9908247, and Citation No. 9908248 with the Commission.¹ MDI Mining further represents that it did not receive the proposed assessment for civil penalty from the Secretary of Labor's Mine Safety and Health Administration for these citations until October 2024. When the proposed assessment was received in October, it was dated July 9, 2024, providing the appearance that the 30-day period for contest of the penalty assessment had lapsed. The operator states that this caused confusion and, as a result, it failed to timely file.

The Secretary of Labor does not oppose the operator's request to reopen. The Secretary's Mine Data Retrieval System indicates that the civil penalty assessment became a final order of the Commission on November 27, 2024.

Having reviewed MDI Mining's request and the Secretary's response, we find that the operator made a good faith effort to timely file and that its failure to file to contest the proposed penalty 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

¹ The Commission assigned the cases the following docket numbers: WEST 2024-0251, WEST 2024-0252 and WEST 2024-0253.

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 (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.

A handwritten signature in black ink, appearing to read 'Marvit', is positioned above a horizontal line.

Moshe Z. Marvit, Commissioner

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