

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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July 28, 2025

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

NELSON QUARRIES, INC.,

Docket No. CENT 2025-0191
A.C. No. 14-01477-609859

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

ORDER

BY: Baker, Commissioner

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2024) (“Mine Act”). On March 25, 2025, the Commission received from Nelson Quarries, Inc. (“Nelson Quarries”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the proposed assessment that became a final order.

On December 20, 2024, the subject proposed assessment became a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a), after Nelson Quarries did not file a notice of contest. Mine Safety and Health Administration, *Mine Data Retrieval System*, www.msha.gov/data-and-reports/mine-data-retrieval-system (last visited July 25, 2025).

Under section 105(a), an operator who wishes to contest a proposed penalty must notify the Secretary of Labor’s Mine Safety and Health Administration (“MSHA”) 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).

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”); *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993). 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 will be permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

In its motion to reopen, Nelson Quarries asserts that it timely filed to contest the proposed penalties within 30 days, but “may have sent our notice of contest to the wrong [MSHA office].” Mot. at 1. Nelson Quarries further represents that it had incorrectly assumed that MSHA would have routed its notice of contest to the correct office. The Secretary filed a response indicating that she did not oppose the operator’s motion.

Attached to the operator’s motion is an email it received from MSHA’s Wilkes-Barre Office of Assessments on December 11, 2024. The email states:

Per our phone conversation, I have attached the proposed assessment for statement number 000609859

When contesting, please send or email to the instructions on the 3rd page of the highlighted area.

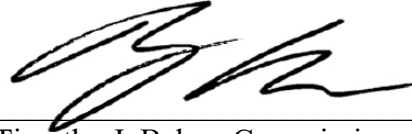
...

Ex. 1.

The Commission requires that an operator seeking to reopen a proceeding after a final order bear the burden of establishing an entitlement to extraordinary relief. “At a minimum, the applicant for such relief must provide all known details, including relevant dates and persons involved, and a clear explanation that accounts, to the best of the operator's knowledge, for the failure to submit a timely response and for any delays in seeking relief once the operator became aware of the delinquency or failure” *Higgins Stone Co.*, 32 FMSHRC 33, 34 (Jan. 2010). Moreover, “[i]t is an operator’s responsibility to fully read any information provided by the Secretary in connection with a proposed penalty.” *Mike Morgan Indus., LLC*, 46 FMSHRC 863, 865 (Oct. 2024) (citing *Stone Zone*, 41 FMSHRC 272, 275 (June 2019)).

I conclude that the operator has failed to satisfy its burden and to “fully read” the information provided on how to contest the penalty. Nelson Quarries’ motion provides no details regarding its alleged attempt to timely contest. The email attached to the motion contains no reference to an attempt to contest the penalties; instead, it references a prior “phone conversation.” Additionally, the email was sent by MSHA on December 11, 2024 – nine days before the 30-day contest period expired. Rather than demonstrating good cause for Nelson Quarries’ failure to timely file, I conclude that the email in exhibit demonstrates that the operator missed a second opportunity to timely file.

Because the operator has not provided specific details or evidence regarding its attempt to timely file, I find that it did not satisfy its burden to demonstrate that its failure to timely file was the result of a mistake, excusable neglect, or some other good cause reason. Accordingly, Nelson Quarries' motion is denied.

A handwritten signature in black ink, appearing to read 'T. Baker', written over a horizontal line.

Timothy J. Baker, Commissioner

Commissioner Marvit, concurring:

I write to agree with Commissioner Baker in this case for the reasons he set forth above and the additional reasons explained 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, the operator received the final order. We deny reopening in its opinion because the operator has not alleged good cause or provided a factual accounting for its failure to timely contest the penalties. Though I believe the Commission lacks the authority to consider motions to reopen, I concur in denying reopening in this matter.



Moshe Z. Marvit, Commissioner

Chair Jordan, dissenting:

On March 25, 2025, Nelson Quarries filed its motion to reopen with the Commission.

Nelson Quarries maintains that it timely filed to contest the proposed penalties; it further states that the reason the contest form was not received by MSHA may have been because it was mistakenly sent to the wrong address. Nelson Quarries attached a December 11, 2024 email it received from MSHA's Wilkes-Barre Office of Assessments, as an exhibit to its motion to reopen. The email demonstrates that the operator was communicating with MSHA about contesting the penalties within the 30-day contest period. An operator's good faith efforts to timely contest penalties are a relevant factor when considering whether the operator has indicated a good cause reason. *See, e.g., Deatley Crushing Co.*, 46 FMSHRC 632 (Aug 13, 2024). I find that Nelson Quarries has established that it was acting timely and in good faith in an attempt to contest the penalties.

Moreover, the Commission has routinely granted motions to reopen when the operator has made timely, albeit mistaken, attempts to contest a civil penalty assessment. *See, e.g., Mitsubishi Cement Corp.*, 47 FMSHRC 283 (Apr. 2025) (granting an unopposed motion to reopen where the operator sent its notice of contest to St. Louis, Missouri). Here, Nelson Quarries maintains that it made a timely attempt to contest. The Secretary does not oppose the operator's request to reopen.

Accordingly, upon consideration of the operator's motion to reopen, and the Secretary's response, I conclude that Nelson Quarries has sufficiently established that its failure to timely file was the result of a mistake.


Mary Lu Jordan, Chair

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