

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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August 11, 2025

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),

v.

S&G EXCAVATING, INC.

Docket No. LAKE 2025-0122
A.C. No. 12-02362-605047

Docket No. LAKE 2025-0123
A.C. No. 12-02196-605043

BEFORE: Jordan, Chair; Baker and Marvit, Commissioners

ORDER

BY: Jordan, Chair, and Baker, Commissioner

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2024) (“Mine Act”). On October 15, 2024, the Commission received from S&G Excavating, Inc. (“S&G”) a motion seeking to reopen two penalty assessments that had become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).¹

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

¹ For the limited purpose of addressing these motions to reopen, we hereby consolidate Docket No. LAKE 2025-0122 and Docket No. LAKE 2025-0123 involving similar procedural issues. 29 C.F.R. § 2700.12. S&G seeks to reopen three of the eight citations in Docket No. LAKE 2025-0122, and 18 of the 20 citations in Docket No. LAKE 2025-0123.

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 assessments were delivered on October 15, 2024, and became final orders of the Commission on November 14, 2024. Delinquency letters for both assessments were mailed on December 30, 2024.

Contest paperwork must be mailed to MSHA’s Civil Penalty Compliance Office in Washington, D.C. or emailed to MSHA-PenaltyContests@dol.gov, while payments for uncontested citations must be mailed to MSHA’s Lock Box in St. Louis, Missouri. Here, S&G asserts that it mailed “all relevant information,” i.e., its penalty contests and its payment for the uncontested penalties, to the St. Louis address. S&G asserts that it discovered the issue upon receiving the December delinquency letters. The operator called the Civil Penalty Compliance Office for further guidance on January 16, 2025, and moved to reopen on January 24, 2025.

The Secretary does not oppose S&G’s request to reopen. She further notes that these delinquencies were the mines’ first in 20 years of operation, that the operator made timely payment for the uncontested penalties, and that the operator acted promptly upon receiving the delinquency letters.

We note that S&G attempted to timely contest the proposed assessments. Records provided by the Secretary indicate that S&G mailed its paperwork to the St. Louis address on or about October 22, 2024, approximately three weeks before the assessments became final.² We also note that the operator proactively sought guidance from MSHA, and moved to reopen the assessments less than one month after receipt of the delinquency letters. *Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009) (motions received within 30 days of an operator’s first notice from MSHA that it has failed to timely file a notice of contest have presumptively been filed within a reasonable amount of time). Finally, as the Secretary notes, the operator does not have a history of untimely contests or delinquencies.

² S&G represents that its contest form was mailed with its payment for the uncontested penalties, and documentation provided by the Secretary reflects that the check used to pay the uncontested penalties was dated October 22 and processed by MSHA on October 29.

Having reviewed S&G's request and the Secretary's response, we find that S&G's failure to timely contest the assessments was the result of inadvertence. We also note that the operator acted in good faith by timely filing its requests to reopen. In the interest of justice, we hereby reopen these matter and remand them 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 petitions 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*, 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 orders 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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