

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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September 13, 2023

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. CENT 2023-0057
ADMINISTRATION (MSHA)	:	A.C. No. 41-03401-552869
	:	
v.	:	
	:	
COOPER STONE	:	

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 December 13, 2022, the Commission received from Cooper Stone (“Cooper”) a motion to reopen a final order of the Commission pursuant to section 105(a) of the Act, 30 U.S.C. § 815(a).

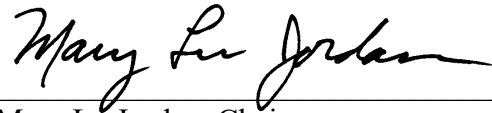
Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of 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).

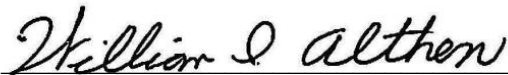
Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessment was delivered to the operator on April 18,

2022, and became a final order of the Commission on May 18, 2022. On December 13, 2022, Cooper filed a motion to reopen, stating that its failure to timely file was the result of mistake or inadvertence. Cooper asserts that its standard practice is to file to contest proposed penalties immediately upon receipt, however, staff illnesses during the COVID-19 pandemic impacted its ability to meet the filing deadline.

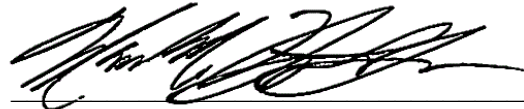
Having reviewed Cooper's request and the Secretary's response, we find that Cooper has demonstrated good cause for its failure to timely file to contest. In the interest of justice, we hereby reopen this matter and remand it to the Chief Administrative Law Judge for further proceedings pursuant to the 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.¹ See 29 C.F.R. § 2700.28.



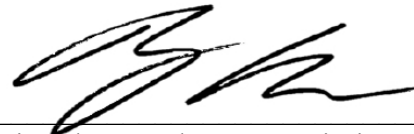
Mary Lu Jordan, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner



Timothy J. Baker, Commissioner

¹ On April 3, 2023, the Secretary filed a petition for assessment of penalty for the captioned matter. The issuance of the April 3, 2023 petition must have been due to an administrative mistake on the part of the Secretary, as the uncontested assessment become a final order of the Commission on May 18, 2022. Accordingly, the Secretary shall issue a new penalty petition pursuant to the terms of this order.

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