

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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July 17, 2026

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

CYBER SQUARE

Docket No. CENT 2025-0308
A.C. No. 16-01613-617533

BEFORE: Rajkovich, Chair; Jordan, 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. (2024) (“Mine Act”). On June 26, 2025, the Commission received from Cyber Square 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).

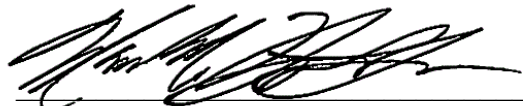
Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of 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 April 8, 2025, and became a

final order of the Commission on May 8, 2025. On June 23, 2025, MSHA sent Cyber Square a delinquency notification letter. Cyber Square asserts that it mistakenly mailed its notice of contest to the address for the payment of penalties in St. Louis, Missouri, along with partial payment of the penalties, instead of correctly mailing it to MSHA's Civil Penalty Compliance Office in Arlington, Virginia. It further asserts that it paid the assessment for the citations it did not wish to contest. The Secretary does not oppose the request to reopen, but urges the operator to take steps to ensure that future penalty contests are timely filed.

Having reviewed Cyber Square's request and the Secretary's response, we find that the operator acted with excusable neglect in this case. *See Warrior Met Coal Mining, LLC*, 42 FMSHRC 770, 771 (Oct. 2020) (finding that operator's misunderstanding and mailing of its contest form to the MSHA St. Louis Office the result of inadvertence, mistake, and excusable neglect); *AA Quarry, LLC*, 46 FMSHRC 979, 980 (Dec. 2024); *see also U.S. Silica*, 42 FMSHRC 926, 927 n.2 (Dec. 2020) ("As we have noted in previous cases, this is a common misunderstanding among mine operators"). 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.



Marco M. Rajkovich, Jr., Chair



Mary Lu Jordan, Commissioner



Timothy J. Baker, Commissioner

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