

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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August 20, 2026

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

v.

DELHUR INDUSTRIES, INC.

Docket No. CENT 2025-0352
A.C. No. 41-05396-622731

Docket No. WEST 2025-0360
A.C. No. 41-00581-622748

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

ORDER

BY: Chair Rajkovich and Commissioner Jordan

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2024) (“Mine Act”). On August 18, 2025, the Commission received from DelHur Industries, Inc. (“DelHur”) two motions seeking to reopen 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 Nos. CENT 2025-0352 and WEST 2025-0360, involving similar procedural issues. 29 C.F.R. § 2700.12.

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 in CENT 2025-0352 the proposed assessment was delivered to DelHur’s post office box on June 25, 2025, and became a final order of the Commission on July 25, 2025. In WEST 2025-0360, the proposed assessment was delivered on June 26, 2025 to the mine operator’s physical address, and became a final order of the Commission on July 26, 2025. DelHur filed its contests in both cases on July 29, 2025, and was notified the contests were untimely in emails from MSHA dated August 8 and 12, 2026.

DelHur states that it has an established process for contesting citations. DelHur stamps MSHA correspondence with the date received when the mail is received by office staff and opened, not when the mail is received at its post office box.² The safety manager then reviews the proposed penalties and determines the appropriate response to each penalty, filing a contest within 30 days of the date stamped on the assessment.

In both cases, the operator does not dispute the receipt of the proposed assessments. Instead, DelHur contends that the proposed assessments were “received” when they were picked up from the post office on June 30. DelHur’s safety manager believed that he had until July 30 to file its contests, 30 days from receipt. In addition, the operator attributes the delay in filing to MSHA mistakenly sending the proposed assessments to its post office box, instead of its address of record.³

Regarding WEST 2025-0360, the operator has failed to provide an explanation for its failure to timely contest that is consistent with the record. DelHur explains that the reason these

² DelHur’s procedures for processing its penalty contests were based on the belief that proposed assessments were not “received” until it had retrieved the proposed assessment from the post office. In a previous case with DelHur, we granted the operator’s motion to reopen on similar facts based on the good faith attempt to timely contest weighing in favor of reopening when the contest was only filed 10 days late. *Delhur Indus., Inc.*, 48 FMSHRC 84 (Feb. 2026). We note that this decision was issued in February 2026, well after the above-captioned motions to reopen were filed.

³ There appears to be some confusion on the part of DelHur as to its address of record. In WEST 2025-0360, the proposed assessment was delivered to the address of record for DelHur’s Blake Pit listed on its Legal Identity Report (MSHA Form 2000-7): 4390 West Van Giesen Street, Suite B, West Richland, Washington. In CENT 2025-0352, the proposed assessment was sent to address of record for the Catus Mine: P.O. Box 5270, West Richland, Washington. The Cactus Mine’s Legal Identity Report also lists the West Van Giesen Street address as a “personal service address.” MTR Exhibit C. MSHA explains on its website that the personal service address is an additional physical address where the operator is able to receive FedEx deliveries. It does not negate the address of record the operator has designated to receive official mail. *See* Form 2000-7 Online Instructions (available at <https://www.msha.gov/form-2000-7-online-instructions>) (last accessed Aug. 20, 2026). If DelHur prefers service at its West Van Giesen Street address, it must update its Legal Identity Report accordingly.

penalties were deemed a final order is because: 1) MSHA sent the proposed assessments to its P.O. Box instead of the address of record; and 2) that MSHA calculated the final order date incorrectly because it equated the date of the delivery to the P.O. Box with the date the proposed assessment was received by the operator. However, USPS records demonstrate that the proposed assessment was delivered to the address of record, not to the P.O. Box as DelHur's motion assumes, and signed for by "L.B." Sec'y Opp. Attachment B. We acknowledge that the operator filed its contest only two days late and filed a timely motion to reopen. However, as a threshold matter, an operator seeking to reopen a final penalty bears the burden of showing that it is entitled to such relief. In addition to providing all known details, including relevant dates and persons involved, the operator must provide a clear explanation that accounts for the operator's failure to timely file. *See Higgins Stone Co.*, 32 FMSHRC 33, 34 (Jan. 2010).

Here, DelHur failed to provide relevant facts or an explanation as to why it failed to file a timely contest of a proposed assessment delivered to its address of record. Accordingly, we deny the Motion to Reopen in WEST 2025-0360.

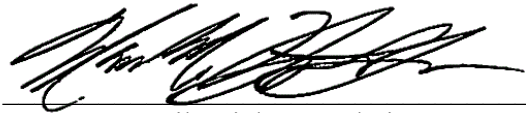
As to CENT 2025-0352, USPS records show that the proposed assessment was delivered to the operator's P.O. Box on June 25 but DelHur contends that the package was not picked up until June 30.⁴ Unless a signature is on file, certified mail sent to a P.O. Box requires the post office to place a notice in the P.O. Box alerting the owner that a piece of certified mail was received and that a signature is required for pickup. United States Postal Service, *Handbook PO-610* (Nov. 2014), § 1-2, 6-1.4. It is not clear if the Secretary failed to send the proposed assessment via certified mail or if the post office mistakenly delivered the proposed assessment into the P.O. Box without requiring signature.

Section 105(a) of the Mine Act requires that the Secretary issue proposed civil penalty assessments "by certified mail" and provides the operator "30 days from the *receipt* of the notification issued by the Secretary" to contest the civil penalties. 30 U.S.C. § 815(a) (emphasis added). Certified mail requires a signature from the recipient. Certified Mail - The Basics, USPS (May 2026), <https://faq.usps.com/s/article/Certified-Mail-The-Basics> (last accessed Aug. 20, 2026). Therefore, it reasons that Congress intended service to be effective upon the operator signing for the proposed assessment—not when it arrives at the post office.⁵ If Congress had intended otherwise, the certified mail requirement would not have been included in the Act.

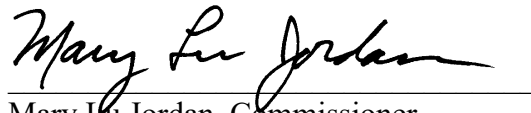
⁴ The USPS Tracking records provided by the Secretary were accessed on June 25, 2025, and thus could not capture the date when the proposed assessment was picked up by DelHur.

⁵ In *Georgetown Sand & Gravel, Inc.*, 46 FMSHRC 812 (Sept. 2024), we denied without prejudice an operator's motion to reopen a final order where the operator asserted that it had contested the proposed assessment within 30 days of retrieving it from the post office. The operator argued that the Secretary had failed to send the proposed assessment by certified mail and that it had collected the mail two days after the assessment arrived at the post office. We denied the motion because the operator did not adequately justify its delay. To the extent our holding that service is effective upon the operator's signing for the mail at the post office is inconsistent with that decision, we overrule any contrary implication in *Georgetown Sand & Gravel*.

Having reviewed DelHur's request and the Secretary's response, we conclude that the proposed penalty assessment did not become a final order of the Commission because the operator timely contested the proposed assessment. Section 105(a) states that if an operator "fails to notify the Secretary that he intends to contest the . . . proposed assessment of penalty . . . the citation and the proposed assessment of penalty shall be deemed a final order of the Commission." 30 U.S.C. § 815(a). Here, DelHur notified the Secretary of the contest within 30 days of receiving the proposed assessment. This obviates any need to invoke Rule 60(b). Accordingly, the operator's motion to reopen is moot, and this case is remanded 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.



Marco M. Rajkovich, Jr., Chair



Mary Lu Jordan, Commissioner

Commissioner Baker, concurrence:

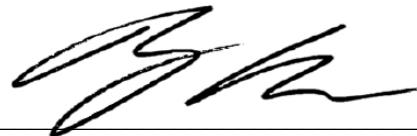
With respect to WEST 2025-0360, I agree with the majority for the reasons set forth above. With respect to CENT 2025-0352, I concur.

In *Georgetown Sand & Gravel, Inc.*, the majority determined delivery of certified mail to an operator's address of record (including at a P.O. Box) constitutes receipt of the penalty assessment. 46 FMSHRC 812, 813 (Sep. 2024). The majority noted that simply stating that the assessment was not retrieved until some days after delivery was not sufficient. Specifically, the majority noted, "[t]he operator has explained why the assessment was retrieved two days after it was delivered, but has not explained why a delay in retrieving the assessment resulted in a delay in contesting the assessment." *Id.* As a result, the majority dismissed the case without prejudice and asked the operator to provide an explanation of its failure.

In the instant case, the Secretary delivered the penalty assessment to the operator's P.O. Box. As noted by my colleagues, the P.O. Box is currently listed as an address of record for the operator. As a result, under the holding in *Georgetown Sand & Gravel*, I would find that the operator's response here was untimely.

However, unlike in *Georgetown Sand & Gravel*, the operator here provided an explanation as to why it failed to timely contest the assessment. Specifically, in its Motion to Reopen, the operator argues that it believed that "receipt" of the assessment did not occur until it picked up the assessment at the post office. For the reasons outlined above, I believe this to be an erroneous interpretation of the law. However, I believe that erroneous interpretation amounted to a good-faith mistake. Further, I note that the contest was filed only two days late. As a result, I would determine that the operator demonstrated good cause to reopen.

For these reasons, I would grant its motion to reopen.

A handwritten signature in black ink, appearing to read 'TJ Baker', written over a horizontal line.

Timothy J. Baker, Commissioner

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