

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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July 29, 2026

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

ARCOSA LWS, LLC

Docket No. CENT 2025-0354
A.C. No. 41-01628-619652

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 August 20, 2025, the Commission received from Arcosa LWS, LLC (“Arcosa”) 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 the proposed assessment was delivered to the operator on May 5, 2025. On

June 4, 2025, the proposed assessment became a final order of the Commission. On July 21, 2025, a delinquency notification was mailed by MSHA to the operator.

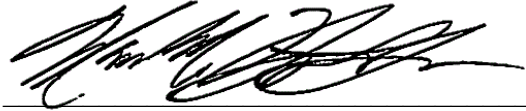
Arcosa asserts that its employees are directed to scan any assessment, and forward it, over email, to the appropriate personnel for processing, the operator's Vice President (with a copy forwarded to the Safety Program Manager). However, the operator claims that the employee who received and signed for the assessment failed to forward it to the appropriate personnel, resulting in the operator's failure to timely contest the assessment. This employee had been hired on April 28, 2025, a few days before the assessment was delivered. The employee was terminated on June 28 for performance issues. To ensure future assessments are timely contested, the operator asserts that it will improve oversight of its employees who handle mail. The Secretary of Labor does not oppose the request to reopen, noting the operator's history of timely contesting assessments and no other delinquent penalties.

The Commission has previously held that “[m]otions to reopen received within 30 days of an operator's receipt of its first notice from MSHA that it has failed to timely file a notice of contest will be presumptively considered as having been filed within a reasonable amount of time.” *Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009). Here, the delinquency notification was mailed on July 21, and the motion to reopen was filed on August 20, less than 30 days later. Therefore, the motion was filed within a reasonable amount of time.

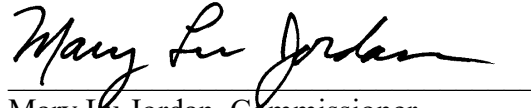
Moreover, under *Noranda Alumina, LLC*, 39 FMSHRC 441, 445-46 (Mar. 2017), “we consider whether the failure to timely contest an assessment resulted from a unique occurrence, *i.e.*, a mistake that the operator usually does not make.” There, we reopened the matter because we found that the operator had demonstrated “an existing internal processing system prior to receiving [the] assessment,” and that this “system failed because of a unique occurrence.” *Id.* Similarly, Arcosa had an existing internal processing system that failed because of a unique occurrence—the assessment was received by a newly hired employee who failed to forward the assessment. Arcosa conducted a thorough internal investigation to determine what had led to the problem and the employee responsible was terminated soon afterwards for performance issues. We also recognize the operator's history of timely contesting assessments and lack of other delinquent penalties.

Having reviewed Arcosa's motion and the Secretary's response, we find that the operator acted in good faith by timely filing its request to reopen, and demonstrated good cause for its failure to timely contest the assessment. 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.

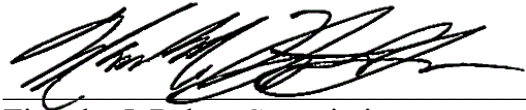
Accordingly, consistent with Rule 28, the Secretary shall file a petition for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.

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Marco M. Rajkovich, Jr., Chair

A handwritten signature in black ink, appearing to read 'Mary Lu Jordan', written over a horizontal line.

Mary Lu Jordan, Commissioner

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

Timothy J. Baker, Commissioner

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