

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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**March 13, 2023**

SECRETARY OF LABOR, :  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA) :  
 : Docket No. SE 2022-0100  
v. : A.C. No. 08-00729-532107  
 :  
SUN WEST ACQUISITION :  
CORPORATION :

BEFORE: Jordan, Chair; Althen, Rajkovich, 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. (2018) (“Mine Act”). On April 26, 2022, the Commission received from Sun West Acquisition Corporation (“Sun West”) 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, 2021, and became a final order of the Commission on May 10, 2021. Sun West asserts that due to “loss of . . . staff,” it did not receive the penalty assessment until after the 30 days had passed. Sun West’s Motion at 1. Although the Secretary does not oppose the request to reopen, he notes that the unpaid penalty was referred to the U.S. Department of Treasury for collection on June 25, 2021.

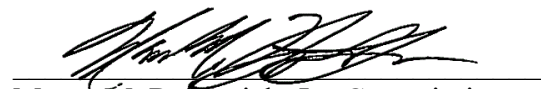
We note that Sun West fails to allege specific facts to explain why it neglected to timely contest the proposed assessment. The operator merely states that it was “unable to contest the case in a timely manner due to loss of some of [their] . . . staff and didn’t receive notice until the 30 days had passed.” *Id.* However, Sun West fails to specify what it means by “loss of staff” or how this apparent “loss” was connected to the operator’s failure to receive the proposed assessment or respond in a timely manner. This fails to adequately establish good cause for a failure to timely file. *See E. Associated Coal, LLC*, 30 FMSHRC 392, 394 & n. 2 (May 2008) (operators filing a motion to reopen must “provide a sufficiently detailed explanation for its failure to timely contest the proposed penalty assessment” and “disclose with specificity its grounds for relief.”); *Olmos Contracting, LLC*, 39 FMSHRC 2015, 2017 (Nov. 2017) (same).

The operator’s failure to allege sufficient facts is compounded by the fact that the motion was filed nearly one year after the proposed assessment became a final order of the Commission. Under Rule 60(c), a motion to reopen, regardless of its merit, is only granted if it is filed within a reasonable time. In the context of penalty assessments, in considering whether an operator has unreasonably delayed in filing a motion to reopen, we find relevant the amount of time that has passed between an operator’s receipt of a notification from MSHA and the operator’s filing of its motion to reopen. *See, e.g., Highland Mining Co.*, 31 FMSHRC 1313, 1316 (Nov. 2009). Once Sun West was made aware that it had failed to timely contest the proposed penalties, it did not take prompt action to try to rectify the situation. MSHA records show that the operator received the proposed assessment on April 8, 2021, and that it became a final order of the Commission on May 10, 2021. The present motion to reopen was filed on April 26, 2022—351 days later. *See, e.g., Olmos Contracting, LLC*, 39 FMSHRC at 2018 (denying a motion to reopen because the operator had filed the motion 49 days after the proposed assessment had become a final order). Sun West has provided no explanation for this extreme delay. This alone is reason enough to deny the motion. *See Highland Mining Co.*, 31 FMSHRC at 1316.

Accordingly, we deny Sun West's motion.

  
Mary Lu Jordan, Chair

  
William I. Althen, Commissioner

  
Marco M. Rajkovich, Jr., Commissioner

  
Timothy J. Baker, Commissioner

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