

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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WASHINGTON, DC 20004-1710

**March 26, 2021**

SECRETARY OF LABOR,	:	Docket No. CENT 2020-0043
MINE SAFETY AND HEALTH	:	A.C. No. 23-00252-496351
ADMINISTRATION (MSHA)	:	
	:	Docket No. CENT 2020-0044
v.	:	A.C. No. 23-01978-496352
	:	
BAILEY QUARRIES, INC.	:	Docket No. CENT 2020-0045
	:	A.C. No. 23-02219-498428
	:	
SECRETARY OF LABOR	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. CENT 2020-0046
	:	A.C. No. 03-01232-498119
CARROLL COUNTY STONE, INC.	:	

BEFORE: Traynor, Chair; Althen and Rajkovich, Commissioners

**ORDER**

BY THE COMMISSION:

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On December 6, 2019, the Commission received a motion from Michael Boardman on behalf of Bailey Quarries, Inc., and Carroll County Stone, Inc., seeking to reopen multiple 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).<sup>1</sup>

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

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<sup>1</sup> For the limited purpose of addressing the motions to reopen, we hereby grant the operator’s request to consolidate these captioned dockets. 29 C.F.R. § 2700.12.

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 three of the proposed assessments were delivered on August 5, 2019, and thus became final orders of the Commission on September 4, 2019 (Docket Nos. CENT 2020-0043, CENT 2020-0044, CENT 2020-0046). A fourth proposed assessment was delivered on September 10, 2019 and became a final order on October 10, 2019 (Docket No. CENT 2020-0045). The operator asserts that it mistakenly sent the notice of contests along with the payment of the other citations to MSHA’s address in St. Louis, Missouri.

The motion, however, does not make clear the relationship between Bailey Quarries and Carroll County Stone. Nor does the motion make clear the relationship between Mr. Boardman and the operators. If Mr. Boardman is an owner, partner, officer, employee of, or attorney for the operators, he is permitted to represent them pursuant to Commission Procedural Rule 3(b)(3) and 3(a). If not, he may be permitted to represent the operators with the permission of the Commission, pursuant to Commission Procedural Rule 3(b)(4).

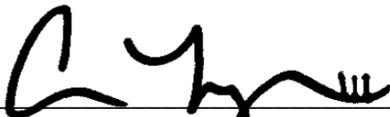
The Secretary does not oppose the motions to reopen, but urges the operator to take all steps to ensure that all future penalty contests are sent to MSHA’s Civil Penalty Compliance Office at the address in Arlington, Virginia as stated in the proposed penalty assessment within 30 days of receipt.

Having reviewed operator’s request and the Secretary’s response, we find that the operators have established that they failed to timely contest the assessments due to a mistake and in the interest of justice, we hereby reopen these matters conditionally. We direct either Mr. Boardman or the parties themselves to file a motion explaining the relationship between Bailey Quarries and Carroll County Stone, as well as their relationship to Mr. Boardman. If required by the nature of the relationship, the motion must also seek permission to have Mr. Boardman represent the operators in reopening the motions.<sup>2</sup>

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<sup>2</sup> As stated above, Mr. Boardman is permitted to represent the operators without seeking permission if he is an owner, partner, officer, or employee of the operators. Rule 3(b)(3). He is also permitted to represent any operator for which he is an attorney. Rule 3(a). If Mr. Boardman does not fall into any of these categories, he may file a motion seeking permission to represent any of the operators under Rule 3(b)(4). The motion should state the basis for his request, including basic information identifying his relationship to each operator and the basis for his request to represent each operator.

If the motion directed by this order is not filed within 30 days, our conditional grant of the motion to reopen will lapse and the motion to reopen will be deemed denied with prejudice. Unless the Secretary objects and demonstrates that permitting said representation would be improper, the motion will be granted and will apply retroactively to the date the original motion was filed.



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Arthur R. Traynor, II, Chair



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William I. Althen, Commissioner



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Marco M. Rajkovich, Jr., Commissioner

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