

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVE., N.W., SUITE 520N  
WASHINGTON, DC 20004-1710

August 24, 2022

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. SE 2022-0118
ADMINISTRATION (MSHA)	:	A.C. No. 40-00864-551693
	:	
v.	:	
	:	
NYRSTAR TENNESSE MINES	:	
GORDONSVILLE, LLC	:	

BEFORE: Traynor, Chair; Althen and Rajkovich, 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 May 19, 2022, Nyrstar Tennessee Mines Gordonsville, LLC, filed a motion to reopen a penalty assessment that it previously paid.

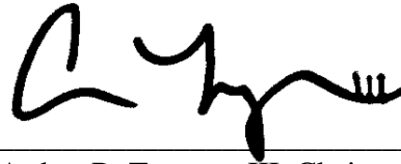
Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of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

The Secretary of Labor reports that on April 12, 2022, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) timely received full payment (\$12,297) for the penalties associated with the 24 citations at issue.

Nyrstar asserts that its failure to contest the penalties was a mistake. Along with the motion to reopen, Nyrstar attached an affidavit from a superintendent stating that he did not timely contest the penalties because he believed that the operator and MSHA had reached an agreement on the abatement of each violation at issue. However, no agreement was ultimately reached. As the Secretary acknowledges, as of the time of filing, the parties have still not yet reached an agreement to terminate the citations. The Secretary does not oppose the motion to reopen, noting that reopening will allow the parties to contest citations before the Commission if they are not able to resolve the outstanding issues.

Having reviewed Nyrstar’s request and the Secretary’s response, we find that the operator’s failure to timely file was the result of a mistake. We hereby reopen this matter, and remand the case 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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Arthur R. Traynor, III, Chair



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William I. Althen, Commissioner



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Marco M. Rajkovich, Jr., Commissioner

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