

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N  
WASHINGTON, D.C. 20004-1710

**October 11, 2024**

SECRETARY OF LABOR, :  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA) :  
 :  
v. : Docket No. LAKE 2024-0004  
 : A.C. No. 11-03182-579201  
PATTON MINING, LLC, :

BEFORE: Jordan, Chair; Baker and Marvit, 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 October 2, 2023, the Commission received from Patton Mining, LLC (“Patton”) 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), 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 June 27, 2023, and became a final order of the Commission on July 27, 2023.


Patton operates the Deer Run Mine in Hillsboro, Illinois, which is owned by Foresight Energy. Foresight provides services to Patton. Patton states that the person familiar with the processing of proposed assessments is Foresight's Director of Safety and Compliance ("Safety Director"). Patton states that Foresight's Safety Director received the proposed assessment on June 28, 2023. Foresight's Safety Director along with the Assistant Corporate Safety Director for American Consolidated Natural Resources, reviewed the assessment and decided to contest 4 of the 19 citations and orders. On July 24, 2023, MSHA received payment for 15 of the 19 violations. It was Foresight's Safety Director's responsibility to return the form notifying MSHA of the specific citations it intended to contest. Somehow, he mistakenly did not return the form to MSHA, which resulted in Patton's failure to timely contest the assessment.

Patton learned of its failure to contest when it received the delinquency letter around September 11, 2023. Foresight's Safety Director immediately commenced an investigation into the matter and realized that he had not sent back the form contesting the citations per his normal routine. Patton argues that it intended to contest the four citations and its failure to do so was the result of an administrative error and oversight. The operator maintains that its procedure for contest has worked well in the past because Foresight's Safety Director generally pays close attention to proposed assessments, thus mistakes like this are uncommon. Because Foresight's Safety Director made a simple mistake and erroneously believed that he had returned the assessment, Patton argues that fundamental fairness dictates the reopening of this case. The operator notes that it quickly took steps to seek reopening of the case and maintains that they will work to ensure timely future contests.

The Secretary opposes Patton's motion responding that Patton's vague claims of "administrative error" and "simple mistake" do not provide viable justifications for its failure to timely submit its contest. She further asserts that the operator has failed to explain how its administrative error does not reflect an inadequate and unreliable office procedure. The Secretary states that given Patton's overall history of timely penalty payments and contests, as well as its timely payment of some of the penalties in this assessment, the Commission should deny this motion without prejudice.

After receiving the assessment, Patton immediately paid the uncontested citations. Upon receiving the letter of delinquency and launching an internal investigation to determine the cause of its failure, the operator timely filed its motion to reopen. Patton does not have a history of failing to contest assessments nor a history of filing motions to reopen. Further, we recognize that in the past, we have found simple failure to return a contest form to constitute “mistake” or “inadvertence” sufficient to establish good cause for reopening pursuant to Rule 60(b)(1). *See e.g. Oak Grove Res., LLC*, 39 FMSHRC 1768, 1769 (Sept. 2017) (reopening where operator paid citations it did not intend to contest but “mistakenly” or “inadvertently” forgot to forward contest form to counsel, which was an isolated incident). Because Patton may have reasonably relied on our prior caselaw regrading simple failure to return contest forms, we find it would be unjust to deny this motion. However, we will look on all future accidental failures to timely file contests with greater scrutiny.

Therefore, 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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Mary Lu Jordan, Chair



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Timothy J. Baker, Commissioner



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Moshe Z. Marvit, Commissioner

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