

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

**October 19, 2020**

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEVA 2020-0057-M
v.	:	A.C. No. 46-04694-486291
	:	
MEADOWS STONE & PAVING, INC.	:	

BEFORE: Rajkovich, Chairman; Althen and Traynor, Commissioners

**ORDER**

BY THE COMMISSION:

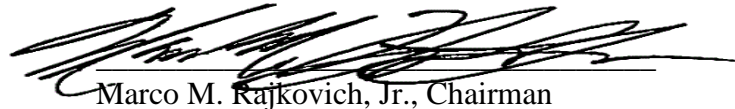
This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”). On October 18, 2019, the Commission received from Meadows Stone & Paving, Inc. (“Meadows Stone”) a motion seeking to reopen a penalty assessment that had become a final order of the Commission 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 10, 2019, and became a final order of the Commission on May 10, 2019. Meadows Stone asserts that the notice of contest was timely mailed on April 24, 2019, but was not received by MSHA's Civil Penalty and Compliance Office in Arlington, Virginia. A check for payment of the uncontested penalties was mailed at the same time to MSHA's address for payment processing in St. Louis, Missouri. The Secretary's records indicate that the notice of contest was improperly mailed with the check to the St. Louis address, rather than the Civil Penalty and Compliance Office.<sup>1</sup> The Secretary does not oppose the request to reopen, but urges the operator to take steps to ensure that future penalty contests are timely filed, and are sent to MSHA's Civil Penalty Compliance Office at the address stated in the proposed penalty assessment.

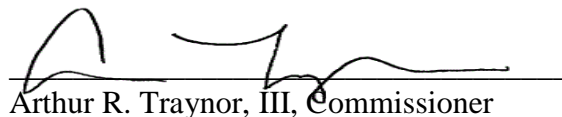
Having reviewed Meadows Stone's motion and the Secretary's response, we find that the delay in this instance arose from a mistake in mailing the notice of contest to the wrong address. In the interest of justice, we hereby reopen this matter and remand it to the Chief Administrative Law Judge for further 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.



Marco M. Rajkovich, Jr., Chairman



William I. Althen, Commissioner



Arthur R. Traynor, III, Commissioner

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<sup>1</sup> Meadows Stone counters that MSHA must have misplaced the penalty contest, asserting that it could not have been improperly mailed to the St. Louis address because the operator did not have that address until September. However, the operator successfully mailed the check to the St. Louis address in April, at the same time the notice of contest was mailed.

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