FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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January 6, 2025

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA) v. L ROCK INDUSTRIES, INC.	Docket No. WEST 2023-0348 A.C. No. 45-03710-581640

BEFORE: Jordan, Chair; Baker, and Marvit, Commissioners

ORDER

BY: Jordan, Chair, and Baker, Commissioner

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) ("Mine Act"). On February 27, 2024, the Commission received from L Rock Industries, Inc. ("L Rock") a motion seeking to reopen a penalty assessment and relieve it from the Default Order entered against it.

On October 16, 2023, the Chief Administrative Law Judge issued an Order to Show Cause in response to L Rock's perceived failure to answer the Secretary of Labor's August 15, 2023 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a default on November 16, 2023, when it appeared the operator had not filed an answer within 30 days.

The Judge's jurisdiction in this matter terminated when the default occurred. 29 C.F.R. § 2700.69(b). Under the Mine Act and the Commission's procedural rules, relief from a judge's decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2)(A)(i); 29 C.F.R. § 2700.70(a). If the Commission does not direct review within 40 days of a decision's issuance, it becomes a final decision of the Commission. 30 U.S.C. § 823(d)(1). Consequently, the Judge's order here has become a final decision of the Commission. MSHA mailed the operator a delinquency notice on July 5, 2023.

L Rock seeks to reopen this matter, claiming that it mailed a request for a conference, but that it appears that it was not received.[1] The operator also submits that there has been confusion with receiving mail from the Department of Labor's Mine Safety and Health Administration ("MSHA") because the company has a new owner. L Rock states that although it filed a legal identity report, it is still receiving mail at previous addresses.

The Secretary opposes L Rock's request to reopen the assessment, asserting that L Rock has not established good cause for its failure to contest the penalties. The Secetary contends that the penalty petition and show cause order were served to L Rock at the address listed on its legal identity report, and that a new legal identity report has not been filed since May 2015. She notes that a conference was scheduled by MSHA and held with the operator on June 21, 2023. The Secretary also asserts that L Rock has provided a vague or cursory explanation. Although the operator stated that it mailed a request for a conference and that there has been confusion in receiving mail from MSHA, L Rock failed to explain in detail why it failed to timely answer the petition or show cause order.[2] The Secretary further asserts that L Rock has an inadequate or unreliable internal procedure, as evidenced in part by a previous failure to timely file an answer or respond to show cause orders.

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"); *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993). 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 will be permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

A party seeking to reopen a final penalty bears the burden of showing that it is entitled to such relief, through a detailed explanation of its failure to timely respond. *Revelation Energy, LLC*, 40 FMSHRC 375, 375-76 (Mar. 2018). General assertions or conclusory statements are insufficient. *Southwest Rock Prod., Inc.*, 45 FMSHRC 747, 748 (Aug. 30, 2023); *B & W Res., Inc*., 32 FMSHRC 1627, 1628 (Nov. 2010). At a minimum, the applicant must provide all known details, including relevant dates and persons involved, and a clear explanation that accounts, to the best of the operator's knowledge, for the failure to submit a timely response. *Higgins Stone Co.*, 32 FMSHRC 33, 34 (Jan. 2010).

Here, L Rock provides vague statements it had requested a conference, and that there was confusion in receiving mail from MSHA, without identifying the error or the cause of the neglect for why it failed to answer the petition or the show cause order. The operator also fails to specify

[1] Per the Chief Judge's order, an answer should have been filed with the Commission to avoid default. The Commission has no record of receiving a request for conference or anything approximating an answer to the civil penalty petition.

[2] The Order to Show Cause was served by the Chief Judge to the operator at the new owner's postal address. A courtesy copy was also mailed to the operator's current email address.

what steps it has taken to ensure the error does not recur. *See, e.g., KC Transport, Inc.*, 43 FMSHRC 79 (Jan. 2021) (granting reopening, in part, because the operator had taken steps to improve its internal processing systems).

Having reviewed L Rock's request and the Secretary's response, we find that the operator has not provided sufficient explanation to justify reopening the captioned proceeding.

Accordingly, we deny L Rock's motion.

Mary Lu Jordan, Chair

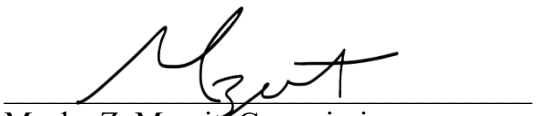
Timothy J. Baker, Commissioner

Commissioner Marvit, concurring:

I write to agree with the Majority in this case for the reasons set forth below.

In *Explosive Contractors*, 46 FMSHRC __, No. CENT 2024-0122 (Dec. 4, 2024), I dissented and explained that Congress did not grant the Commission the authority to reopen final orders under section 105(a) of the Mine Act. 30 U.S.C. § 815(a). The Commission's repeated invocation of Federal Rule of Civil Procedure 60(b) cannot overcome the statutory language. However, in *Belt Tech*, I explained in my concurrence that "the Act clearly states that to become a final order of the Commission, the operator must have received the notification from the Secretary." 46 FMSHRC __, slip op. at 3, No. WEVA 2024-0036 (Dec. 5, 2024) (citing *Hancock Materials, Inc.*, 31 FMSHRC 537 (May 2009)). Taken together, these opinions stand for the proposition that the Commission may not reopen final orders under its statutory grant, but an operator may proceed if it has not properly received a proposed order.

In the instant case, as the Majority recounts, the operator failed to answer the Judge's Order to Show Cause and it became a final decision under the Act. Similar to section 105(a), the Act here provides a clear directive on the grounds for review of a final decision. 30 U.S.C. § 823(d)(1)-(d)(2)(A)(i). The Commission declined to exercise its authority to review the decision within the period allowed. As such, I do not believe that Rule 60(b) should be invoked under these circumstances either, similar to my reasoning in the cases cited above. Though I believe the Commission lacks the authority to consider motions to reopen, I concur with the Majority in denying reopening in this matter.



Moshe Z. Marvit, Commissioner

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