FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N

WASHINGTON, DC 20004-1710

January 6, 2025

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA) v. TATA CHEMICALS SODA ASH PARTNERS, LLC	Docket No. WEST 2024-0151 A.C. No. 48-00155-591498

BEFORE: Jordan, Chair; Baker and Marvit, Commissioners

AMENDED 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 March 4, 2024, the Commission received from Tata Chemicals Soda Ash Partners, LLC ("Tata") 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 for 32 penalties in the sum of $18,975 was delivered to the Post Office where the operator receives mail on January 12, 2024. On February 8, 2024, the operator made a timely partial payment in the amound of $13,385.[1] The unpaid penalties became a final order of the Commission on February 12, 2024. On March 29, 2024, MSHA sent Tata a delinquency notice.

Tata asserts that it retrieves mail from the Post Office on Tuesdays and Thursdays and then distributes the mail to its Safety Manager, who determines whether to pay or contest proposed civil penalties. The operator contends that, although the proposed assessment was delivered to the Post Office on January 12, it did not retrieve the assessment until the following Tuesday, January 16, 2024. Tata believed that it had 30 days from January 16, or until February 15, to contest the proposed assessment. It explains that it inadvertently missed the contest deadline by one day due to an "administrative oversight." MTR at 3.

The Secretary opposes the motion to reopen. She submits that the proposed assessment was sent to the operator's address of record and signed for on January 12. The Secretary argues that the 30-day period for contest began to run on January 12. She notes that regardless of whether the due date was February 11 or 15, the operator missed the deadline, and its asserted reason of administrative oversight is too vague to justify reopening.

Tata subsequently filed a statement in support of its motion, explaining that its administrative error was a simple miscalculation of days upon receiving the assessment. It further explains that mail is not delivered to the mine's office, and that the nearest Post Office is 24 miles from the mine's office. [2]

As the Secretary notes, the proposed assessment was delivered to the operator's address of record and signed as having been received on January 12, 2024. Accordingly, the operator was required to have filed a contest by February 11, 2024, and its contest was five days late.

[1] MSHA applied the payment toward 24 of the 32 violations, including toward the citations whose penalties Tata seeks to reopen. The Secretary states that the payment was an administrative function and not the result of Tata's intent to pay those penalties specifically. Thus, such payment does not render the motion to reopen moot.

[2] On October 27, 2024, the Secretary filed a letter with the Commission pursuant to Federal Rule of Appellate Procedure 28(j). In the letter the Secretary noted that the Commission recently denied reopening in *Georgetown Sand & Gravel, LLC*, 46 FMSHRC 812 (Sept. 2024), which involved facts similar to the subject facts. Tata responded to the Secretary's letter, stating that its administrative oversight caused the late filing, and that its mistake was in good faith and not due to inadequate or unreliable internal processing.

We hereby accept the operator's supplemental statement, the Secretary's Rule 28(j) letter, and Tata's response to the letter as part of the record.

An operator seeking to reopen a final penalty bears the burden of showing that it is entitled to such relief. In addition to providing all known details, including relevant dates and persons involved, the operator must provide a clear explanation that accounts for the operator's failure to timely contest the assessment. *Higgins Stone Co.*, 32 FMSHRC 33, 34 (Jan. 2010).

In *Georgetown*, cited by the Secretary, the Commission found the operator failed to explain why its contest was untimely and denied the motion to reopen without prejudice. 46 FMSHRC at 813. In so doing, the Commission explained that denying without prejudice meant that "the operator may refile the motion with additional information." *Id.* In contrast, here the operator provided information, through a supplemental filing, explaining that that when it received the proposed assessment, it simply miscalculated the date that the contest was due.

The Secretary has not alleged that Tata has acted in bad faith. On the contrary, the operator timely paid penalties it chose not to contest, and promptly filed its motion to reopen upon learning that it had failed to timely contest the remaining penalties. *See Western Refractory Constr., Inc.*, 46 FMSHRC ___, slip op. at 2, No. CENT 2023-0191 (Oct. 17, 2024) (reopening where Secretary did not allege bad faith and the operator promptly filed its motion). Moreover, the operator has not filed a motion to reopen during the past ten years.

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 Tata 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. Miscalculating the due date for the contest is a simple mistake. 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.

Mary Lu Jordan, Chair

Timothy J. Baker, Commissioner

Commissioner Marvit, dissenting:

I write to disagree 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. 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 Commission's order became final under the language of section 105(a). The Majority, however, votes to reopen the case. The Mine Act has not granted us authority to reconsider final orders of the Commission as I set out more fully in *Explosive Contractors*. To the contrary, it has limited our authority to do so. Therefore, I respectfully dissent and would deny reopening.

Moshe Z. Marvit, Commissioner

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