

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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WASHINGTON, DC 20004-1710

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),

v.

SPECIALTY SAND COMPANY,

JAN 12 2016

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: Docket No. CENT 2015-169-M  
: A.C. No. 41-01143-338044  
:  
:

BEFORE: Young, Nakamura, and Althen, Commissioners<sup>1</sup>

**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 January 12, 2015, the Commission received from Specialty Sand Company (“Specialty”) 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

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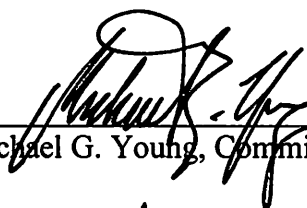
<sup>1</sup> This case has been delegated to a panel of three Commissioners pursuant to section 113(c) of the Mine Act for the limited purpose of assessing the merits of the motion to reopen. 30 U.S.C. § 823(c).


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 mailed on January 25, 2014, was returned unclaimed on March 6, 2014, and became a final order of the Commission on April 7, 2014. Specialty asserts that it never received the proposed assessment. However, Specialty also concedes that it intends to pay the full assessment amount, and wishes to reopen this matter simply to avoid paying collection costs. The Secretary opposes the request to reopen and notes that a delinquency notice was mailed to the operator on May 21, 2014, and the case was referred to the U.S. Department of Treasury for collection on September 11, 2014. The Secretary asserts that the operator was made aware of the proposed assessment and confirmed its mailing address on file prior to the mailing of the proposed assessment on January 25, 2014. However, the postal service was unable to deliver the proposed assessment to this address.

In considering whether an operator has unreasonably delayed in filing a motion to reopen, we find relevant the amount of time that has passed between an operator’s receipt of a delinquency notice and the operator’s filing of its motion to reopen. *See, e.g., Left Fork Mining Co.*, 31 FMSHRC 8, 11 (Jan. 2009); *Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009) (holding that motions to reopen filed more than 30 days after receipt of notice of delinquency must explain the reasons why the operator waited to file a reopening request, and lack of explanation is grounds for the Commission to deny the motion). Here, the delay in responding to MSHA’s delinquency notice amounted to more than 30 days. While Specialty explained its failure to timely contest the proposed assessment, it failed to explain its delay in filing this motion to reopen after receiving the delinquency notice. This lack of explanation is grounds for denial.

Accordingly, we deny Specialty’s motion.

  
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Michael G. Young, Commissioner

  
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Patrick K. Nakamura, Commissioner

  
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William I. Althen, Commissioner

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