

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

**December 6, 2023**

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. LAKE 2023-0116
ADMINISTRATION (MSHA)	:	A.C. No. 20-02434-568270
	:	
v.	:	
	:	
ST. MARYS CEMENT	:	

BEFORE: Jordan, Chair; Althen, Rajkovich, and Baker, Commissioners

**ORDER**

BY THE COMMISSION:

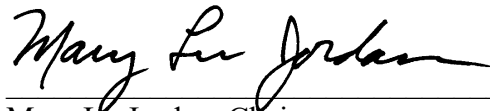
This case arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On March 5, 2023, the Commission received from St. Marys Cement (“St. Marys”) a motion to reopen a final order of the Commission pursuant to section 105(a) of the Act, 30 U.S.C. § 815(a).

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).

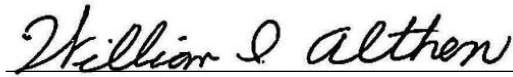
Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessment was delivered to the operator on December 19, 2022, and became a final order of the Commission on January 19, 2023. In its motion to reopen, the operator states that its failure to timely file was the result of a mistake. The operator asserts that the proposed assessment was delivered to the mine just prior to Christmas, at a time when personnel were absent. At that time there also happened to be a change in safety leadership. The mine supervisor does not recall receiving the assessment. Furthermore, the operator believed that this citation was contested as part of a previous separate assessment. The operator discovered that this belief was mistaken on March 3, 2023, while reviewing MSHA’s Mine Data Retrieval System (“MDRS”). The Secretary does not oppose the operator’s request to reopen.

Having reviewed St. Marys request and the Secretary’s response, we find that the operator has demonstrated that its failure to timely file to contest was the result of a mistake. The operator demonstrated that the mistake was made in good faith by pro-actively reviewing MSHA’s MDRS and promptly moving to reopen upon their discovery of the error. 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.



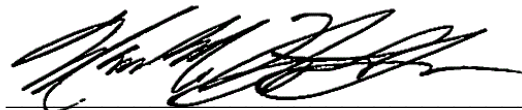
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Mary Lu Jordan, Chair



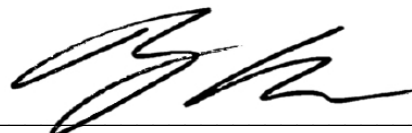
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William I. Althen, Commissioner



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Marco M. Rajkovich, Jr., Commissioner



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Timothy J. Baker, Commissioner

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