FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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December 13, 2024

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)	:	
	:	Docket No. SE 2024-0109
v.	:	A.C. No. 09-00241-588160
JDI INDUSTRIAL[1]	:	

BEFORE: Jordan, Chair; Baker and Marvit, Commissioners

ORDER

BY: Chair Jordan and Commissioner Baker

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 21, 2024, the Commission received from JDI Industrial ("JDI") 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

[1] The caption in this matter previously identified the contractor to whom the relevant assessment was issued as J. Davis, Inc. The caption has been amended to reflect that the contractor's identification on record with the Department of Labor's Mine Safety and Health Administration is JDI Industrial.

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") and the U.S. Postal Service indicate that delivery of the proposed assessment was attempted and rescheduled on November 3, 2023, then reattempted and refused on November 6. The assessment became a final order of the Commission on December 6, 2023.[2] A delinquency was mailed to the contractor on January 22, 2024.

JDI asserts that, prior to receipt of the delinquency notice, it mistakenly believed no assessment would be issued. The Safety Director explains that he had cooperated with MSHA to remedy the underlying recordkeeping citations and implement procedures to ensure future reports were timely filed, and therefore believed the citations had been "closed." He concedes that he was still learning about the mine's operations at the time, and did not ask whether the penalties associated with the citations had been dropped. After receiving the delinquency notice, the Director of Safety contacted MSHA and learned that delivery of the assessment package had been refused. JDI is unable to explain why any if its employees would refuse to sign for mail coming from MSHA.

The Secretary does not oppose the motion to reopen. The Secretary notes the Safety Director's diligent efforts in working with MSHA to correct the recordkeeping errors and to implement procedures to prevent future errors. The Secretary further notes that JDI has no history of untimely contests or delinquent penalties, as the five recordkeeping citations at issue are the only citations the contractor has ever received.

According to the parties' representations, the assessment was not timely contested for two reasons: delivery of the assessment was refused, and the Safety Director did not believe an assessment would be issued because he misunderstood the legal ramifications of abatement. Neither of these justifications establish good cause to reopen the final assessment.

We have looked disfavorably on motions to reopen where the operator has actively refused service of the proposed assessment, finding that a "party which refuses to accept certified mail from MSHA will most likely be unable to establish good cause [to reopen]." *Munn Road Sand & Gravel*, 26 FMSHRC 383, 384 (May 2004). Moreover, a party seeking to reopen a final penalty must provide a detailed explanation that accounts, to the best of the party's knowledge, for the failure to submit a timely contest. *Higgins Stone Co.*, 32 FMSHRC 33, 34 (Jan. 2010). General assertions or conclusory statements are insufficient. *Southwest Rock Prod., Inc.*, 45 FMSHRC 747, 748 (Aug. 30, 2023). Here, JDI refused delivery of the assessment, and is unable to offer any explanation beyond a general assertion that it "does not know why anyone from

[2] Service has occurred where delivery to the correct address was attempted but refused. *See, e.g.*, *Dyno Nobel*, 46 FMSHRC 397 (June 2024) (assessment became final 30 days after attempted delivery to operator's address of record); *cf. Beelman Truck Co.*, 40 FMSHRC 1104 (Aug. 2018) (finding the motion to reopen moot where attempted delivery was unclaimed, the operator asserted it never received the assessment, and the Secretary did not argue that the operator refused to accept delivery).

[JDI] would refuse to sign for the mail coming from MSHA." This statement is not sufficient to establish good cause to reopen this case.

Furthermore, we have held that an operator's intentional failure to contest based on ignorance of the law does not provide grounds for relief under Rule 60(b)(1). *Active Res., Inc.*, 47 FMSHRC 848, 850 (Oct. 2024) (denying operator's motion to reopen where the operator elected not to contest an assessment because it mistakenly believed that the citation was considered abated with the assessment of the penalty). Here, JDI made no effort to contest the assessment because it mistakenly believed no assessment would be issued for an abated citation.[3] In other words, JDI intentionally did not file a contest based on an erroneous understanding of the law.

Having reviewed JDI's request and the Secretary's response, we find that the provided justifications do not establish good cause for reopening the captioned proceeding. Accordingly, we deny JDI's motion.

Mary Lu Jordan, Chair

Timothy J. Baker, Commissioner

[3] The Commission may reopen a final order where an operator intended to contest the assessment, but failed to timely do so because it was unfamiliar with some aspect of the contest process. *E.g.*, *Highway Materials, Inc.*, 45 FMSHRC 593 (July 2023) (reopening where the operator intended to contest citations but failed to timely file because it mistakenly believed that the conference with MSHA tolled the filing deadline). That is distinguishable from the situation here, in which the operator made no attempt to contest the assessment due to ignorance of the legal ramifications of abatement.

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. 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 received the final order. The Majority denies reopening in its opinion because the operator has not alleged good cause or provided a factual accounting for its failure to timely contest the penalties. 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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