

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

WASHINGTON, DC 20004-1710

December 18, 2025

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

v.

U.S. AGGREGATES, INC.,

Docket No. LAKE 2025-0315
A.C. No. 12-00016-611533

BEFORE: Rajkovich, Jr., Chair; Jordan, Baker and Marvit, Commissioners

ORDER

BY: Rajkovich, Jr., Chair; Jordan and Baker, Commissioners

This case arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2024) (“Mine Act”). On July 31, 2025, the Commission received from U.S. Aggregates, Inc., 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 section 105(a) orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure under which, for example, a party could be entitled to relief from a final order of the Commission on the basis of mistake, inadvertence, or excusable neglect. *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).

This proceeding concerns the proposed civil penalty for two citations issued to U.S. Aggregates by the Secretary of Labor's Mine Safety and Health Administration ("MSHA") following an investigation into a fatal accident at the mine. The operator timely contested these two citations pursuant to section 105(d) of the Mine Act. 30 U.S.C. § 815(d).¹

Separately, under section 105(a) of the Mine Act, the Secretary notified the mine operator of the proposed civil penalty for these two citations. 30 U.S.C. § 815(a). To contest the penalties the operator must file a contest form with the Secretary within 30 days. If the operator fails to timely contest, the proposed penalty becomes a final order of the Commission.² *Id.* Here U.S. Aggregates did not separately file to contest the penalty within the 30-day period. MSHA's records indicate that the proposed assessment penalty was delivered on December 18, 2024, and became final orders of the Commission on January 17, 2025.³ MSHA sent the operator a delinquency notice on March 4, 2025.

U.S. Aggregates states that it discovered the outstanding penalties on February 14, 2025, while reviewing MSHA's Mine Data Retrieval System ("MDRS"). Thereafter, U.S. Aggregates belatedly attempted to contest the penalties through the Secretary's email filing system. R. Ex. A. U.S. Aggregates states that it became aware that its attempt to contest had not been accepted when it received the Secretary's delinquency notice weeks later (dated March 4, 2025). The operator represents that the departure of its president contributed to its failure to timely file.

The Secretary opposes the operator's motion. The Secretary states that the operator has failed to specify details to establish that its failure to timely file was the result of a mistake, excusable neglect or some other good cause reason. Furthermore, the Secretary alleges that the operator has not been able to account for the signification delay in seeking to reopen the penalties once it discovered the delinquency.⁴

¹ On November 19, 2024, the Commission docketed the contest of the citations as Docket Nos. LAKE 2025-0062 and LAKE 2025-0063.

² Commission Procedural Rule 21 explicitly states that the filing of a notice of contest of an underlying citation does not constitute a challenge to a subsequently issued proposed penalty assessment, which must be filed as a separate notice of contest. 29 C.F.R. § 2700.21; *see Marfork Coal Co.*, 29 FMSHRC 626, 636 (Aug. 2007).

³ United States Postal Service records provided by the Secretary demonstrate that the assessment was delivered to the operator on December 18, 2024, and was signed for by a "D. Hairston." S. Ex. B.

⁴ The Secretary's opposition also relies on the seriousness of the incident; these penalties relate to citations issued after a miner was fatally electrocuted. The Secretary additionally maintains that the operator should have identified its error within its processing system with more specificity and then explained how it would remediate moving forward.

When filing a motion to reopen before the Commission the operator bears the burden of showing exceptional circumstances. *Lone Mountain Processing, Inc.*, 35 FMSHRC 3342, 3345 (Nov. 2013). “[T]he applicant for such relief 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 and for any delays in seeking relief once the operator became aware of the delinquency or failure....” *Lone Mountain*, 35 FMSHRC at 3345 (citing *Higgins Stone Co.*, 32 FMSHRC 33, 34 (Jan. 2010)).

We conclude that the operator has failed to establish its burden of proof. The motion fails to provide relevant dates, specify the operator’s regular penalty contest procedures, the role of the president within that process, or how the operator plans to prevent similar problems in the future. Additionally, the motion completely omits mention of its employee to whom the assessment was addressed. S. Ex. A.

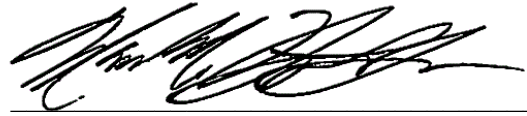
A general assertion that there was a personnel change at the mine is insufficient to support reopening. See *Southwest Rock Prods., Inc.*, 45 FMSHRC 747, 748 (Aug. 2023) (“a grant of relief under Rule 60(b) requires more than “general assertions or conclusory statements as to why an operator failed to timely contest””); *Tintic Consol. Metals, LLC*, 46 FMSHRC 652 (Aug. 2024) (denying the operator’s motions because it “provides no explanation for its failure to timely contest the proposed penalty assessment beyond a general description of personnel changes and fails to describe actions it will take to ensure timely filing in the future.”).

Moreover, the operator did not explain why it waited more than five months to file the motion to reopen once it discovered its initial error. See, e.g., *Staker & Parson Cos.*, 47 FMSHRC 271, 272 (Apr. 2025) (motions to reopen filed more than 30 days after an operator discovers that it failed to timely file a notice of contest are presumptively not filed within a reasonable amount of time). On February 14, 2025, U.S. Aggregates discovered the outstanding penalties in the Secretary’s MDRS, which specified that these particular penalties became final orders of the Commission on January 17, 2025. Inexplicably, counsel for U.S. Aggregates then emailed the Secretary an untimely contest of the penalties, rather than immediately filing a motion to reopen with the Commission. On March 4, 2025, the Secretary mailed a delinquency notice to the operator. On May 5, 2025, the operator acknowledged the pending need to file a motion to reopen with the Commission in an email to the Secretary. Nevertheless, the operator waited about three additional months before filing the motion to reopen on July 31, 2025. We find the operator’s delay in filing a motion with the Commission to strongly militate against reopening.

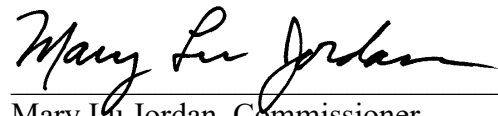
While the filing of a contest of an underlying citation is an indication of an initial intent to also contest the penalty, simply contesting the citation does not in of itself excuse a subsequent failure to contest a proposed penalty. *Lone Mountain*, 35 FMSHRC at 3346-47.

Here, when considering all the factors, we determine that the operator has not demonstrated that there was a good cause reason for its failure to timely file to contest the Secretary’s proposed penalty.

Accordingly, U.S. Aggregate's motion to reopen is hereby **DENIED**.

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Marco M. Rajkovich, Jr., Chair

A handwritten signature in black ink, appearing to read 'Mary Lu Jordan', written over a horizontal line.

Mary Lu Jordan, Commissioner

A handwritten signature in black ink, appearing to read 'Timothy J. Baker', written over a horizontal line.

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 965 (Dec. 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 975 (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.

A handwritten signature in black ink, appearing to read 'M. Marvit', is written above a horizontal line.

Moshe Z. Marvit, Commissioner

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