

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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WASHINGTON, DC 20004-1710

**February 21, 2024**

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. LAKE 2024-0016
v.	:	A.C. No. 21-00820-581886A
	:	
CHAD BUUS, employed by	:	
UNITED STATES STEEL –	:	
MINNESOTA ORE OPERATIONS	:	

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

**ORDER**

BY THE COMMISSION:


This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On October 13, 2023, the Commission received from Chad Buus (“Buus”) a motion seeking to reopen a penalty assessment that had appeared to become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

On August 7, 2023, Buus received a proposed penalty assessment from the Secretary. On September 7, 2023, the proposed assessment was deemed a final order of the Commission, when it appeared that the operator had not filed a Notice of Contest within 30 days.

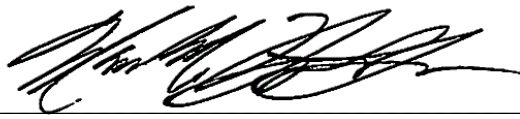
The operator asserts that it timely filed its contest of the assessment on August 16, 2023, via the Mine Safety and Health Administration’s (MSHA) contest email address. MSHA’s records confirm that the contest was timely received but had not been assigned or processed by the agency. When this error was brought to MSHA’s Civil Penalty and Compliance Office’s attention, the contest was assigned and processed. Based upon these circumstances, the Secretary submits that the Motion to Reopen should be denied as moot. Alternatively, the Secretary does not oppose the Motion to Reopen.

Having reviewed Buus’ request and the Secretary’s response, we conclude that the proposed penalty assessment did not become a final order of the Commission because the operator timely contested the proposed assessment. Section 105(a) states that if an operator “fails to notify the Secretary that he intends to contest the . . . proposed assessment of penalty . . . the citation and the proposed assessment of penalty shall be deemed a final order of the Commission.” 30 U.S.C. § 815(a). Here, Buus notified the Secretary of the contest. This

obviates any need to invoke Rule 60(b). Accordingly, the operator's motion to reopen is moot, and this case is remanded 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.

  
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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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