FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

March 9, 2026

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA) v. TRAP ROCK AND GRANITE QUARRIES, LLC	Docket No. CENT 2025-0051 A.C. No. 23-02327-606696

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

ORDER

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

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2024) ("Mine Act"). On June 30, 2025, the Commission received from Trap Rock and Granite Quarries, LLC ("Trap Rock") a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

On March 3, 2025, the Chief Administrative Law Judge issued an Order to Show Cause in response to Trap Rock's perceived failure to answer the Secretary of Labor's December 30, 2024 Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on April 3, 2025, when it appeared that the operator had not filed an answer within 30 days.

Trap Rock asserts that the captioned matter was formerly handled by its site superintendent; he left the company around January 27, 2025. The operator's new superintendent was not aware of the civil penalty proceeding and thus did not respond to the Commission's Order. The Secretary does not oppose the operator's request and notes that, given the change in personnel, it cannot confirm that a representative of the operator received the Commission's Order. Furthermore, the Secretary represents that Trap Rock has recently hired an environmental compliance manager who reached out to the Secretary to sort through outstanding penalties.

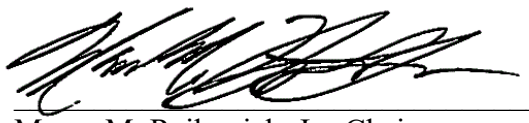
The Judge's jurisdiction in this matter terminated when the default occurred. 29 C.F.R. § 2700.69(b). Under the Mine Act and the Commission's procedural rules, relief from a Judge's decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2)(A)(i); 29 C.F.R. § 2700.70(a). If the Commission does not direct review within 40 days of a decision's issuance, it becomes a final decision of the

Commission. 30 U.S.C. § 823(d)(1). Consequently, the Judge's order here has become a final decision of the Commission.

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""); *Jim Walter Res., Inc*., 15 FMSHRC 782, 786-89 (May 1993). 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 will be permitted. *See Coal Prep. Servs., Inc*., 17 FMSHRC 1529, 1530 (Sept. 1995).

Having reviewed the operator's request and the Secretary's response, we conclude that the operator has established good cause for its failure to timely respond to the Commission's Order to Show cause. Specifically, Trap Rock articulated a clear explanation for its failure to timely respond, including the personnel involved and relevant dates. *See Higgins Stone Co*., 32 FMSHRC 33, 34 (Jan. 2010) (requiring that "[a]t a minimum, the applicant 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."). Furthermore, the operator's proactive attempts to communicate with the Secretary and resolve the matter upon discovery of the error demonstrates the operator's good faith. *See Explosive Contractors, Inc*., 46 FMSHRC 965, 966 (Dec. 2024) (citations omitted) ("[a] movant's good faith and intent to contest are both relevant in determining whether the movant has demonstrated good cause to reopen a final assessment.").

In the interest of justice, we hereby reopen the proceeding and vacate the Default Order. Accordingly, 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.



Marco M. Rajkovich, Jr., Chair

Mary Lu Jordan, Commissioner

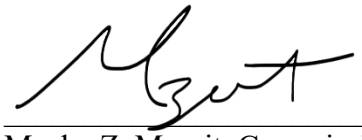
Timothy J. Baker, Commissioner

Commissioner Marvit, dissenting:

I write to disagree 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 Commission's order became final under the language of section 105(a). The Majority, however, votes to reopen the case. The Mine Act has not granted us authority to reconsider final orders of the Commission as I set out more fully in *Explosive Contractors*. To the contrary, it has limited our authority to do so. Therefore, I respectfully dissent and would deny reopening.



Moshe Z. Marvit, Commissioner

Distribution:

Eric Alberter,
Environmental Compliance Manager
Trap Rock and Granite Quarries, LLC
11313 Highway N,
Ironton, MO 63650
Erica@beelman.com

Alexandra J. Gilewicz, Esq.
Thomas A. Paige, Esq.
Office of the Solicitor
U.S. Department of Labor
Division of Mine Safety and Health
200 Constitution Avenue NW, Suite N4428
Washington, DC 20210
Gilewicz.Alexandra.J@dol.gov
Paige.Thomas.A@dol.gov

Melanie Garris
US Department of Labor/MSHA
Office of Assessments, Room N3454
200 Constitution Ave NW
Washington, DC 20210
Garris.Melanie@dol.gov

Acting Chief Administrative Law Judge Michael G. Young
Federal Mine Safety Health Review Commission
1331 Pennsylvania Avenue, NW Suite 520N
Washington, DC 20004-1710
MYoung@fmshrc.gov