

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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March 9, 2026

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

SMART SAND, INC.,

Docket No. LAKE 2025-0274
A.C. No. 47-03625-618663

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 23, 2025, Smart Sand, Inc., (“Smart Sand”) filed 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 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).

On April 28, 2025, the Secretary delivered a proposed assessment to the operator. On May 28, 2025, the assessment became a final order of the Commission when Smart Sand did not file a contest within the required 30-day period.

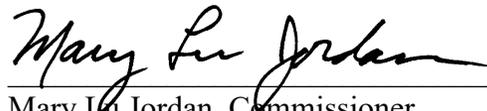
Smart Sand represents that on June 9, 2025, it discovered that it had failed to timely contest Citation No. 8736120 during a review of the Secretary of Labor’s Mine Data Retrieval System (“MDRS”). Counsel explained that previously, on May 2, 2025, counsel and the operator met and decided to contest Citation No. 8736120 and its civil penalty. The penalties for the other citations in this matter were timely paid. However, the contest date for Citation No. 8736120 was never properly calendared by the firm. Counsel attributed the error to a recent departure of a paralegal. Counsel has since changed office procedures so that multiple people have the responsibility to ensure compliance with deadlines. Counsel attested to these representations in an accompanying affidavit. R. Ex. A. The Secretary does not oppose the request to reopen, noting that the operator has a history of timely paying or contesting penalties. Furthermore, counsel acted promptly upon realizing his mistake in this instance.

The Commission has recognized that “[m]otions to reopen received within 30 days of an operator’s receipt of its first notice from MSHA that it has failed to timely file a notice of contest will be presumptively considered as having been filed within a reasonable amount of time.” *Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009). Here, counsel’s prompt filing of a motion upon realizing its failure to timely file, in association with the operator’s history of timely compliance with Mine Act filing deadlines, indicates that the failures were the result of a mistake rather than inadequate office procedures.

Accordingly, having reviewed Smart Sand’s motion and the Secretary’s response, we find that the operator’s failure to timely file was the result of a mistake. *See Wyo-Ben, Inc.*, 47 FMSHRC ___, slip op. 2, No. WEST 2023-0320 (Dec. 8, 2025) (reopening a case after determining that “[t]he operator demonstrated that the mistake was made in good faith by proactively reviewing MSHA’s MDRS and promptly moving to reopen upon discovery of the error.”). In the interest of justice, we hereby reopen Citation No. 8736120 and remand it to the Acting 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.



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

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