FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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March 11, 2025

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), v. PEABODY GATEWAY NORTH MINING, LLC	Docket No. LAKE 2024-0194 A.C. No. 11-03235-595319

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 May 29, 2024, the Commission received from Peabody Gateway North Mining, LLC ("Peabody"), 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).

Records of the Department of Labor's Mine Safety and Health Administration ("MSHA") indicate that the proposed assessment at issue was delivered to the operator on March 13, 2024, and became a final order on April 12, 2024.

On April 30, 2024, MSHA received Peabody's untimely attempt to contest the proposed assessment. Sec'y Ex. C at 6 (envelope postmarked April 24, 2024). On May 1, 2024, MSHA sent Peabody a letter explaining that the order was final; Peabody filed its contest form late. On May 20, 2024, MSHA sent the operator a delinquency notice.

In its motion to reopen, Peabody explains that it failed to timely file to contest the assessment because its recently hired safety manager was not aware of the correct procedures. The mine's new safety manager began in January 2024. He received the proposed assessment on March 19, 2024, and together with the mine's safety consultant, they determined that Peabody would contest the citation and civil penalty at issue. However, because the new safety manager did not know how to contest the penalty or who was responsible for filing, the contest form was not timely filed. Peabody became aware that its contest was not timely filed after it received a letter from MSHA, rejecting Peabody's attempt to contest as untimely. Sec'y Ex. D (MSHA letter).

The Secretary opposes the operator's motion to reopen and contends that the operator has not demonstrated good cause for a failure to timely file.[1] The Secretary alleges that Peabody's explanation is too vague. According to the Secretary, the contest was not timely filed because Peabody failed to properly train its employees.

Peabody Gateway North Mining has filed multiple motions to reopen in the last several years. In June 2022, it filed a motion to reopen after its then safety manager failed to timely submit a contest form. *Peabody Gateway N. Mining, LLC*, 45 FMSHRC 138 (Mar. 2023). In February 2023, Peabody filed a motion to reopen after it failed to file an Answer to an Order to Show Cause. *Peabody Gateway N. Mining*, 46 FMSHRC 19 (Jan. 2024).

The Commission has recognized that repeated motions to reopen may indicate an inadequate or unreliable internal processing system. *Rockwell Mining, LLC*, 45 FMSHRC 49, 492-93 (June 2023). Where a failure to contest a proposed assessment results from an inadequate or unreliable internal processing system, the operator has not established grounds for reopening the assessment. *Shelter Creek Capital, LLC*, 34 FMSHRC 3053, 3054 (Dec. 2012); *Oak Grove Res., LLC*, 33 FMSHRC 103, 104 (Feb. 2011); *Double Bonus Coal Co*., 32 FMSHRC 1155, 1156 (Sept. 2010).

Upon consideration of Peabody's motion here, along with its recent history of filing motions to reopen, we conclude that the failure to timely file contest was the result of an inadequate or unreliable processing system. We find that Peabody has not established that its

[1] The Secretary filed an unopposed motion for an extension of time, from June 10, 2024, to June 28, 2024, to file her response to the operator's motion. The Secretary's motion is granted, and her response is accepted for consideration by the Commission.

failure to timely file was the result of a good cause reason. *See Marfork Coal Co.*, 45 FMSHRC 463, 465 (June 2023) (denying a motion to reopen because the operator was on notice that its processing system was insufficient but failed to take adequate steps to address it). Peabody's motion to reopen is denied with prejudice.

Mary Lu Jordan, Chair

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.

Moshe Z. Marvit, Commissioner

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