

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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**March 11, 2025**

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

v.

COBLESKILL STONE PRODUCTS,  
INC.

Docket No. YORK 2024-0055  
A.C. No. 30-02306-596294

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 Cobleskill Stone Products, Inc., (“Cobleskill”) 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 a proposed assessment of \$1,155 for three citations was delivered to Cobleskill on April 8, 2024. Cobleskill promptly mailed payment of \$294 in satisfaction of two citations. The third citation became a final order of the Commission on May 8, 2024.

In its motion to reopen, Cobleskill asserts that it mistakenly mailed the contest form along with its \$294 payment to MSHA’s address in St. Louis, Missouri. Contests of proposed assessments are required to be mailed to MSHA’s address in Arlington, Virginia. The Secretary does not oppose the request to reopen.

The Commission has reopened final orders in situations where a mine operator timely but mistakenly attempted to file a contest form at MSHA’s St. Louis, Missouri address. *See, e.g., Mulberry Limestone Quarry Inc.*, 45 FMSHRC 814 (Sep. 2023).

Furthermore, the Commission has held 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, the motion to reopen was filed on May 29, 2024, within 30 days of the assessment becoming a final order.

Having reviewed Cobleskill’s request and the Secretary's response, we find that Cobleskill has demonstrated good cause for its failure to timely file. In the interest of justice, we hereby reopen this matter and remand it 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. 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.

  
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Mary Lu Jordan, Chair

  
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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.



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Moshe Z. Marvit, Commissioner

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