FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

April 14, 2025

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA) v. TM CRUSHING, LLC	Docket No. WEST 2024-0174 A.C. No. 04-02544-5922007

BEFORE: Jordan, Chair; Baker and Marvit, Commissioners

ORDER

BY: Jordan, Chair, and Baker, Commissioners

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) ("Mine Act"). On March 22, 2024, the Commission received from TM Crushing, LLC ("TM Crushing") 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), 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).

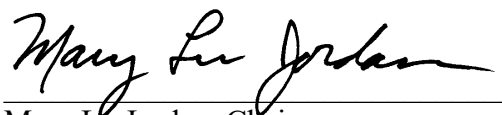
The Department of Labor's Mine Safety and Health Administration ("MSHA") indicates that the proposed assessment was delivered to the operator on January 18, 2024. The assessment became a final order of the Commission on February 19, 2024.

TM Crushing states that, due to inadvertence and mistake, the proposed assessment form contesting the citations and penalties was not sent to MSHA in a timely manner. Specifically, the operator recently had a change in personnel who normally handled the processing of assessment forms. In the transition period, the assessment form did not get forwarded to outside counsel in a timely manner. Once TM Crushing personnel became aware of the assessment form, it was immediately forwarded to the undersigned counsel for contest. The operator further states that its intent to contest the penalties is clear as it did not submit payment to MSHA for the penalties and that no delay nor prejudice will result to the Secretary by reopening this proceeding.

The Secretary opposes the motion stating that TM Crushing has not established good cause for its failure to submit a timely contest and that the motion should be denied with prejudice. Specifically, the Secretary argues that the operator does not explain what the change in personnel was, why and when it occurred, how the responsibilities were handled during its transition, and how this "change" impacted TM Crushing's obligation to timely submit the contest. She notes that the operator also provided no evidence to support its assertions. The Secretary contends that TM Crushing's lack of available resources needed to ensure timely processing and its failure to train its employees on proper penalty processing during staffing changes amounts to an inadequate or unreliable internal processing system. She asserts that TM Crushing also fails to identify any corrective procedures it will implement to address any future processing issues when there is a change in personnel. The Secretary further argues that the operator failed to establish that it filed its motion within a reasonable time, because it did not specify when it became aware of the assessment, and it filed its motion more than a month after it became a final order. The Secretary maintains that TM Crushing has not identified facts that, if proven on reopening, would constitute a meritorious defense.

When filing a motion to reopen before the Commission the operator bears the burden of showing exceptional circumstances. *Lone Mountain Processing, Inc*., 35 FMSHRC 3342, 3345 (Nov. 2013). Relief under Rule 60(b) requires more than "general assertions or conclusory statements as to why an operator failed to timely contest." *Sw. Rock Prods*., 45 FMSHRC 747, 748 (Aug. 2023) (citing *Atlanta Sand & Supply Co*., 30 FMSHRC 605, 608 (July 2008); *Buzzi Unicem USA*, 45 FMSHRC 1015, 1017 (Dec. 2023).

Having reviewed TM Crushing's request and the Secretary's response, we conclude that the operator has failed to provide sufficient information to determine whether good cause may exist to reopen the final order. The operator's motion is deficient as it fails to provide a factual and detailed accounting of the change in personnel and how it resulted in the operator's failure to timely contest the proposed penalty assessment. "At a minimum, the applicant for such relief 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 and for any delays in seeking relief once the operator became aware of the delinquency or failure. . . ." *Lone Mountain*, 35 FMSHRC at 3345 (citing *Higgins Stone Co*., 32 FMSHRC 33, 34 (Jan. 2010)); *Panther Creek Mining, LLC*, 46 FMSHRC 9, 10 (Jan. 2024). In the instant matter, the operator has failed to establish good cause for reopening the above-referenced case. Accordingly, TM Crushing'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 Commission's order became final under the language of section 105(a). 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

Distribution:

Karen L. Johnston, Esq.
Jackson Kelly PLLC,
1099 18th Street, Suite 2150
Denver, CO 80202
KJohnston@jacksonkelly.com

Thomas A. Paige, Esq.
Deputy Associate Solicitor
US Department of Labor
Office of the Solicitor
Division of Mine Safety and Health
200 Constitution Avenue NW, Suite N4428
Washington, DC 20210
Paige.Thomas@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

Chief Administrative Law Judge Glynn F. Voisin
Office of the Chief Administrative Law Judge
Federal Mine Safety Health Review Commission
1331 Pennsylvania Avenue, NW Suite 520N
Washington, DC 20004-1710
GVoisin@fmshrc.gov