

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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May 16, 2024

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. CENT 2023-0248
v.	:	A.C. No. 16-00970-569815
	:	
MORTON SALT, INC.	:	

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

ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On August 8, 2023, the Commission received from Morton Salt, Inc. (“Morton”), 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 was delivered on January 27, 2023. On February 27, 2023, the assessment became a final order of the Commission. On April 13, 2023, MSHA sent the operator a delinquency notice, and on June 15, 2023, the operator’s delinquency was referred to the Department of Treasury.

Morton states that it seeks to reopen Order Nos. 9648951, 9674876, 9674877, 9674883, and 9674887, and that it had filed timely notices of contest with respect to the latter four of these five orders. The four notices of contest filed by Morton Salt were docketed in Nos. CENT 2023-0072 through CENT 2023-0075. On July 31, 2023, the parties were asked to provide a status update on the contest dockets. On August 3, 2023, the Secretary responded that MSHA had not received a contest of the penalties associated with the orders, and the operator responded that the penalties had not been contested in error.¹

Morton Salt submits that the EHS Manager, who was new in his role, failed to timely send the contest of the penalties to MSHA due to an oversight and as the result of an inadvertent mistake. It submits that it will make the required changes to its process so that the error does not happen again.

The Secretary opposes the operator’s motion to reopen. She submits that the operator has failed to justify reopening because the reasons for its failure to timely file were too vague, and Morton Salt failed to state how it corrected its internal processes so that the error would not be repeated. The Secretary further notes that Morton Salt has filed another request to reopen in which it states that it had corrected its internal processes, and that the deficiency in those processes appears not to have been corrected. She notes that the operator has reason to pay particularly careful attention to its citations, orders, and penalties because it has received a pattern of violations notice, and four of the subject orders had been issued pursuant to section 104(e)(1) of the Mine Act.² In addition, the Secretary submits that the operator has not explained its delay in filing its motion to reopen. Finally, the Secretary states that it appears that Morton Salt acted on its delinquent penalties, not because it discovered them through its own diligence, but because a Commission Judge asked for a status update in the related contest proceedings.

The Commission has previously reopened penalty assessments issued to Morton that became final due to the operator’s inadvertence or mistake in processing its proposed assessments. *Morton Salt, Inc.*, 44 FMSHRC 533 (Aug. 2022); *Morton Salt, Inc.*, 45 FMSHRC 286 (May 2023). More recently, however, recognizing that repeated motions to reopen may

¹ On August 31, 2023, a Commission Administrative Law Judge dismissed those contests. The Judge’s dismissal is currently pending for review before the Commission.

² Section 104(e)(1) of the Mine Act provides that if an operator has a pattern of violations of mandatory health or safety standards which are of such nature as could significantly and substantially contribute to the cause and effect of health or safety hazards, it shall be given written notice that such a pattern exists. If, within 90 days following issuance of the POV notice, an inspector cites the operator for a significant and substantial violation, then MSHA may issue a withdrawal order under section 104(e) of the Act. 30 U.S.C. § 814(e)(1).

indicate an inadequate or unreliable internal processing system, the Commission denied a motion to reopen filed by Morton Salt. *Morton Salt, Inc.*, 46 FMSHRC 15 (Jan. 2024). Although Morton has stated that it will take action to prevent untimely filing in the future, it has not identified the steps it will take, and it appears that any steps taken have been ineffective. The Commission has made it clear that 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); *Highland Mining Co.*, 31 FMSHRC 1313, 1315 (Nov. 2009); *Pinnacle Mining Co.*, 30 FMSHRC 1066, 1067 (Dec. 2008); *Pinnacle Mining Co.*, 30 FMSHRC 1061, 1062 (Dec. 2008).

In addition, Morton Salt failed to file the motion to reopen within a reasonable time. The Commission has previously 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). The operator’s August 8 motion to reopen was filed almost four months after MSHA sent the operator a delinquency notice, and two months after the penalties were referred to the Department of Treasury.

We find that Morton has not asserted good cause for its failure to timely contest the proposed penalties. See *Marfork Coal Co.*, 45 FMSHRC 463 (June 2023) (denying a motion to reopen when the operator neglected to fix problems with its internal procedures). The motion is DENIED WITH PREJUDICE.

/s/ Mary Lu Jordan
Mary Lu Jordan, Chair

/s/ William I. Althen
William I. Althen, Commissioner

/s/ Marco M. Rajkovich, Jr.
Marco M. Rajkovich, Jr., Commissioner

/s/ Timothy J. Baker
Timothy J. Baker, Commissioner

/s/ Moshe Z. Marvit
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