

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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**July 11, 2023**

SECRETARY OF LABOR, :  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA) :  
 : Docket No. YORK 2023-0003  
v. : A.C. No. 30-03261-548285  
 :  
CSI SANDS NE, LTD. :

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

**ORDER**

BY THE COMMISSION:

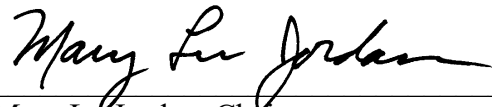
This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On October 6, 2022, the Commission received from CSI Sands NE, Ltd. (“CSI”) a motion seeking to reopen a penalty assessment that had become a final order of the Commission pursuant to 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 14, 2022, and became a final order of the Commission on February 14, 2022. CSI states that it was dealing with extraordinary circumstances involving a complete reconstruction of its facility, an employee’s injury, a natural gas supply failure, and a change in management. CSI explains that the reconstruction of its facility strained its staff. After the proposed assessment was delivered to the mine supervisor, the mine supervisor accepted another job offer. CSI explains that due to these circumstances, it filed its proposed penalty contest twelve days late. The operator states that its new manager has a history of successful mine operation and will ensure that the mine addresses any proposed penalty assessments in a timely manner. The Secretary does not oppose the request to reopen but urges the operator to take steps to ensure that future penalty contests are timely filed.

Having reviewed CSI’s request and the Secretary’s response, we find that the relatively brief delay in filing the notice of contest was the result of excusable neglect arising from unusual circumstances and staff disruption. 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.



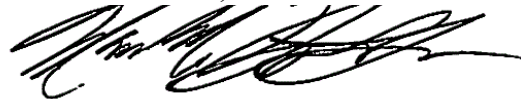
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Mary Lu Jordan, Chair



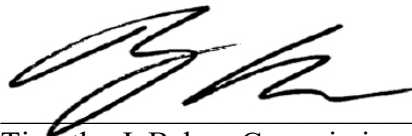
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William I. Althen, Commissioner



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Marco M. Rajkovich, Jr., Commissioner



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Timothy J. Baker, Commissioner

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