

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

August 12, 2025

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

OHIO COUNTY COAL RESOURCES,
INC.,

Docket No. WEVA 2025-0220
A.C. No. 46-01436-604839

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. (2024) (“Mine Act”). On February 21, 2025, the Commission received from Ohio County Coal Resources, Inc., (“Ohio County”) 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).

In its motion to reopen, Ohio County represents that on October 20, 2024, it received the subject proposed assessment for civil penalties from the Secretary of Labor’s Mine Safety and Health Administration (“MSHA”). Ohio County neglected to timely file the contest form, and it became a final order of the Commission on November 20, 2024.

Ohio County alleges that a temporary interruption in the delivery of MSHA proposed assessments, as a result of a problem with MSHA’s mail service provider, contributed to Ohio County’s failure to timely file to contest the assessment at issue. Ohio County represents that proposed assessments were not delivered to the operator in July, August and September 2024. Ex. 1 at 2 (Affidavit of Safety Director Matthew Cunningham). When delivery resumed, the operator received a greater volume of proposed assessments than normal, adding to the Safety Director’s workload. Upon receipt of the subject proposed assessment, Ohio County decided which penalties to pay and which to contest. Timely payment was made. However, the operator neglected to timely file the contest form. Mr. Cunningham became aware of the failure to timely file after receiving a delinquency notice from MSHA. Ohio County filed a motion to reopen soon after discovering the delinquency. The Secretary filed a response indicating that she did not oppose the operator’s request.

Having reviewed Ohio County’s motion and the Secretary's response, we find that the operator’s failure to timely file was the result of excusable neglect. *See e.g., MDI Mining, 47 FMSHRC __*, No. WEST 2025-0154 (July 1, 2025) (where the delay in mailing of the proposed assessment contributed to the operator’s confusion). 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.*



Mary Lu Jordan, Chair



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.



Moshe Z. Marvit, Commissioner

Distribution:

Christopher D. Pence, Esq.
Pence Law Firm PLLC
10 Hale St., 4th Floor
Charleson, WV 25301
cpence@pencefirm.com

Emily O. Roberts, Esq.
Thomas A. Paige, Esq.
Office of the Solicitor
U.S. Department of Labor
Division of Mine Safety and Health
200 Constitution Avenue NW, Suite N4428
Washington, DC 20210
Paige.Thomas.a@dol.gov
Roberts.Emily.O@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