

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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WASHINGTON, DC 20004-1710

**August 13, 2024**

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. CENT 2023-0229
ADMINISTRATION (MSHA)	:	A.C. No. 39-00022-573671
	:	
v.	:	Docket No. CENT 2023-0230
	:	A.C. No. 39-00022-575493
GCC DACOTAH, INC.	:	
	:	

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

**ORDER**

BY THE COMMISSION:

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On July 18, 2023 the Commission received from GCC Dacotah, Inc. (“GCC Dacotah”) a motion seeking to reopen two penalty assessments that had become final orders of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).<sup>1</sup>

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

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<sup>1</sup> For the limited purpose of addressing this motion to reopen, we hereby consolidate docket numbers CENT 2023-0229 and CENT 2023-0230 involving similar procedural issues. 29 C.F.R. § 2700.12.

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 in CENT 2023-0229 was delivered on April 6, 2023, and became a final order of the Commission on May 8, 2023. On June 21, 2023, a delinquency notice was mailed to the operator. In CENT 2023-0230, MSHA’s records indicate that the proposed assessment was delivered on May 8, 2023, and became a final order of the Commission on June 7, 2023.

The operator claims that service to the Secretary was unsuccessful due to a typo in MSHA’s email address for filing contests. The operator claims that it has manually entered and saved the correct MSHA email address into its Outlook system, and that it will request a read receipt for future contests filed with MSHA. The Secretary of Labor opposes the request to reopen noting that this particular error—mistyping MSHA’s email address for contests—is not a unique occurrence for this operator and demonstrates a repeated failure of the operator’s internal processing system. Specifically, the Secretary cites to Docket No. CENT 2023-0173 to illustrate that an identical error had resulted in the operator’s failure to timely contest another recent assessment.<sup>2</sup> *GCC Dacotah, Inc.*, 45 FMSHRC 885 (Oct. 3, 2023).

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. *E.g., Shelter Creek Capital, LLC*, 34 FMSHRC 3053, 3054 (Dec. 2012); *Oak Grove Res., LLC*, 33 FMSHRC 103. 104 (Feb. 2011). Significantly, multiple repeated processing errors of the same nature can reflect an inadequate internal processing system. *Lone Mountain*, 35 FMSHRC 3342 (Nov. 2013) (emphasizing the repeated misplacement of paperwork by the operator). We have also held that a repeated instance of the same clerical error does not warrant reopening. *Marfork Coal Co., LLC*, 2023 WL 4052208 (June 7, 2023).

Here, GCC Dacotah committed the same error four times in as many months. The operator first sent an assessment contest to an incorrect email address on March 24, 2023. The operator filed a motion to reopen the assessment, which the Commission granted (CENT 2023-0173). In its motion, GCC Dacotah stated that it had circulated a memorandum to relevant safety personnel to prevent the error from recurring. Nevertheless, two more contests for a new assessment were sent to an incorrect email address in April 2023, and when the error was discovered, a fourth contest for another assessment was again sent to an incorrect email address in May 2023 (CENT 2023-0229, CENT 2023-0230). While the first case could be considered an honest mistake by the operator, the repeated nature of this error indicates a larger problem with the operator’s internal processes. We note that multiple members of management were included on the April and May contest emails but did not catch the typographical errors.

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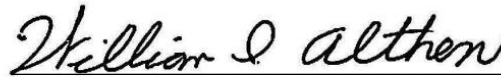
<sup>2</sup> The contests for the assessments at issue in CENT 2023-0173, CENT 2023-0229 and CENT 2023-0230 were all erroneously emailed to “www.MSHA-PenaltyContests@dol.gov” and/or “MSHA-PentaltyContests@dol.gov” rather than “MSHA-PenaltyContests@dol.gov.”

As noted, GCC Dacotah stated in CENT 2023-0173 that it had circulated a memorandum to prevent further typographical errors. It appears the memorandum was ineffective. After the errors here, the operator claims that it has entered the correct MSHA email address into its email system and will be requesting read receipts from MSHA. However, the operator does not provide sufficient assurances that these precautions will not be similarly ineffective. In fact, it appears that the operator used read receipts when contesting CENT 2023-0230, but that did not seem to have prevented the operator from using the wrong email address yet again.

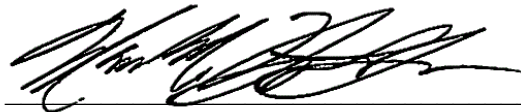
Upon reviewing the record, we find the multiple errors at issue to be the result of the operator's inadequate internal processing system. Therefore, GCC Dacotah has not demonstrated good cause for its failure to timely contest the proposed assessments. The motion is DENIED with prejudice.



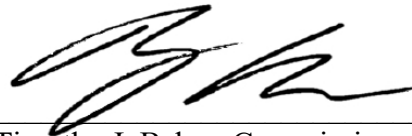
Mary Lu Jordan, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner



Timothy J. Baker, Commissioner



Moshe Z. Marvit, Commissioner

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