



final order of the Commission on May 10, 2023. On June 27, 2023, a delinquency notice was mailed to the operator.

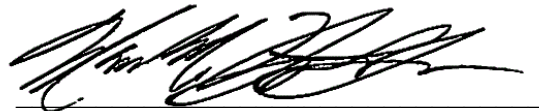
DeAtley claims that on April 11, 2023, the day after receiving the assessment, it timely mailed a contest of the proposed assessment via the U.S. Postal Service’s regular mail. The operator contacted MSHA upon receiving the delinquency letter, but MSHA could not find any record of the contest being filed. The operator believes that an error by the postal service resulted in the contest not being delivered to MSHA. As the contest was not sent via certified mail, the operator is unable to provide documentation of the date the contest was mailed. The Secretary of Labor does not oppose the request to reopen. The Secretary explicitly notes that DeAtley has a well-established history of filing contests in a timely manner.<sup>1</sup>

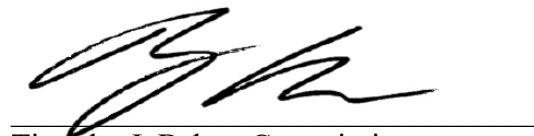
Having reviewed DeAtley’s request and the Secretary’s response, we find that DeAtley acted in good faith. DeAtley also has a history of filing contests in a timely manner.

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

  
William I. Althen, Commissioner

  
Marco M. Rajkovich, Jr., Commissioner

  
Timothy J. Baker, Commissioner

  
Moshe Z. Marvit, Commissioner

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<sup>1</sup> The Secretary does not claim that DeAtley mailed this assessment or any prior assessment to an incorrect address.

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