

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

August 28, 2024

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEST 2023-0406
v.	:	A.C. No. 42-00147-578445
	:	
TINTIC CONSOLIDATED METALS,	:	
LLC	:	

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

ORDER

BY: Rajkovich, Baker, and Marvit, Commissioners

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On September 12, 2023, the Commission received from Tintic Consolidated Metals, LLC (“Tintic”) 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).

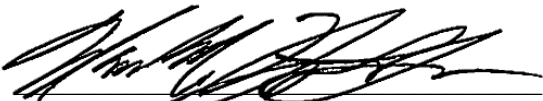
We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“*JWR*”). In evaluating requests to reopen final orders, the Commission 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 June 14, 2023, and became a final order of the Commission on July 14, 2023. On August 29, 2023, MSHA sent the operator a delinquency notice.

Tintic asserts that at the time it received the proposed assessment, it was undergoing major organizational changes in that its Chief Operating Officer was retiring, the Safety Superintendent took a different position, and a new General Manager was appointed. On August 18, 2023, when its new General Manager was appointed, it received “the most recent” proposed assessment on August 18, 2023. Tintic noticed that it had an outstanding balance arising from the subject proposed assessment, No. 000578445, in the amount of \$83,040. Tintic states that it has been reviewing all of its safety systems and controls, and MSHA citations and the reasons for their issuance, in an effort to improve its safety performance and compliance. 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.

The party seeking to reopen a final penalty bears the burden of showing that it is entitled to such relief, through a detailed explanation of its failure to timely respond. *Revelation Energy, LLC*, 40 FMSHRC 375, 375-76 (Mar. 2018). General assertions or conclusory statements are insufficient. *Southwest Rock Prod., Inc.*, 45 FMSHRC 747,748 (Aug. 2023). At a minimum, the applicant must provide all known details, including relevant dates and persons involved, and a clear explanation that accounts, to the best of the operator’s knowledge, for the failure to submit a timely response. *Higgins Stone Co.*, 32 FMSHRC 33, 34 (Jan. 2010). Here, Tintic provides only a cursory explanation for its failure to timely respond to the proposed penalty assessment. Although Tintic states that it was undergoing personnel changes, it fails to provide information regarding how those personnel changes caused its failure to timely file its contest of the proposed penalties. In addition, although Tintic has stated that it is reviewing its safety systems and controls, it has not identified the steps it will take to ensure timely filing in the future. Accordingly, we find that Tintic has failed to meet its burden of showing that it is entitled to relief.

Having reviewed Tintic's request and the Secretary's response, we conclude that the operator failed to establish good cause for reopening the captioned proceeding. Tintic's motion to reopen provides no explanation for its failure to timely contest the proposed penalty assessment beyond a general description of personnel changes and fails to describe actions it will take to ensure timely filing in the future. Accordingly, Tintic's request to reopen is denied. *See Coal-Mac LLC*, 46 FMSHRC 33, 34-35 (Jan. 2024) (denying relief where operator failed to provide sufficient explanation for its untimeliness).



Marco M. Rajkovich, Jr., Commissioner



Timothy J. Baker, Commissioner



Moshe Z. Marvit, Commissioner

Chair Jordan and Commissioner Althen, dissenting,

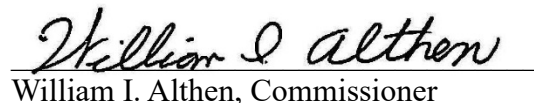
We dissent from the majority's decision and find that Tintic Consolidated Metals, LLC, has demonstrated good cause to reopen this final order.

Tintic filed a motion to reopen on September 12, 2023, soon after receiving a delinquency notice sent by MSHA on August 29, 2023. *Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009) (“[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.”).

Tintic does not have a history of filing motions to reopen with the Commission. This motion, filed *pro se* by its safety coordinator, states that at the time Tintic received the proposed civil penalty assessment it was undergoing major organizational changes. Tintic’s Chief Operating Officer was retiring, the Safety Superintendent moved positions, and a new General Manager was appointed. On August 18, 2023, the new General Manager received a separate proposed assessment from MSHA which stated a prior delinquent balance of \$83,040. Tintic filed the motion to reopen the delinquent penalty assessment and maintains that it has been reviewing all of its safety systems and controls, and MSHA citations and the reasons for their issuance, in an effort to improve its safety performance and compliance.

Our colleagues in the majority deny the motion, finding the operator’s explanation too cursory to meet its burden for relief. To the contrary, the operator included relevant details including who, when and how it discovered its mistake. We conclude that a major organizational change and a missed filing deadline, coupled with the prompt filing of a motion to reopen, indicates that the operator’s failure to timely file was the result of a mistake or excusable neglect. In so concluding, we also consider that the Secretary of Labor filed a response indicating that she did not oppose the operator’s request for relief.


Mary Lu Jordan, Chair


William I. Althen, Commissioner

Distribution:

Robert D. Ayers
Erik J. Adams
Holland & Hart LLP
P.O. Box 68
Jackson, WY 83001
rdayers@hollandhart.com
ejadams@hollandhart.com

Kim Spear, Mine/Safety Superintendent
M. Marnie Taylor, Safety Coordinator
Zachary Wallace, Alt. Mine/Safety
Superintendent
P.O. Box 195
Eureka, UT 84628
Kspear@tinticmetals.com
mtaylor@tinticmetals.com
Zwallace@tinticmetals.com

Emily Toler Scott, Esq.
Counsel for Appellate Litigation
Office of the Solicitor
U.S. Department of Labor
Division of Mine Safety and Health
201 12th Street South, Suite 401
Arlington, VA 22202
scott.emily.t@dol.gov

April Nelson, Esq.
Associate Solicitor
Office of the Solicitor
U.S. Department of Labor
Division of Mine Safety and Health
201 12th Street South, Suite 401
Arlington, VA 22202
Nelson.April@dol.gov

Melanie Garris
USDOL/MSHA, OAASEI/CPCO
201 12th Street South, Suite 401
Arlington, VA 22202
Garris.Melanie@dol.gov

Chief Administrative Law Judge Glynn F. Voisin
Federal Mine Safety Health Review Commission
Office of the Chief Administrative Law Judge
1331 Pennsylvania Avenue, NW Suite 520N
Washington, DC 20004-1710
GVoisin@fmshrc.gov