

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**  
1331 PENNSYLVANIA AVE., N.W., SUITE 520N  
WASHINGTON, DC 20004-1710

**August 30, 2023**

SECRETARY OF LABOR,	.
MINE SAFETY AND HEALTH	:
ADMINISTRATION (MSHA)	: Docket No. WEST 2022-0288
	: A.C. No. 35-03850-558508
v.	:
	:
NORTHSIDE ROCK PRODUCTS LLC	:

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 February 20, 2023, the Commission received from Northside Rock Products LLC (“Northside”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

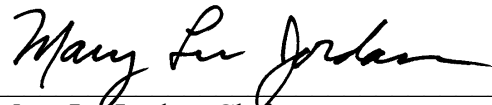
On September 26, 2022, the Chief Administrative Law Judge issued an Order to Show Cause in response to Northside’s perceived failure to answer the Secretary of Labor’s July 27, 2022, Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on October 26, 2022, when it appeared that the operator had not filed an answer within 30 days.

Northside asserts that “the paperwork had been put in the wrong file,” that the operator had mistakenly believed that an answer had been filed, and that the mistake was not discovered until February 20, 2023. The Secretary opposes the request to reopen and argues that the operator does not explain exactly why the paperwork was placed in the wrong file or what procedures may have been implemented to prevent future defaults. The Secretary also notes that the Department of Labor’s Mine Safety and Health Administration (“MSHA”) sent Northside a delinquency notice on January 11, 2023.

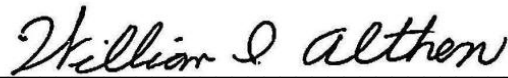
The Judge’s jurisdiction in this matter terminated when the default occurred. 29 C.F.R. § 2700.69(b). Under the Mine Act and the Commission’s procedural rules, relief from a Judge’s decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2)(A)(i); 29 C.F.R. § 2700.70(a). If the Commission does not direct review within 40 days of a decision’s issuance, it becomes a final decision of the Commission. 30 U.S.C. § 823(d)(1). Consequently, the Judge’s order here has become a final decision of the Commission.

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”); *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993). 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 will be permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

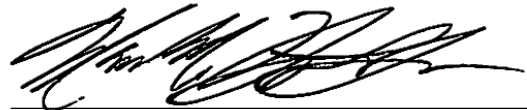
Having reviewed Northside’s request and the Secretary’s response, we conclude that the operator has failed to provide sufficient information to determine whether good cause may exist to reopen the final order. Northside failed to provide a sufficiently detailed explanation for its failure to timely file an answer, including any measures it may have implemented to prevent future defaults, and the reasons why the misfiling was not discovered for more than a month after the delinquency notice had been sent. *See Left Fork Mining Co.*, 31 FMSHRC 8, 11 (Jan. 2009). Accordingly, we deny Northside’s request to reopen without prejudice. The words “without prejudice” mean that Northside may submit another request to reopen the assessment.<sup>1</sup>



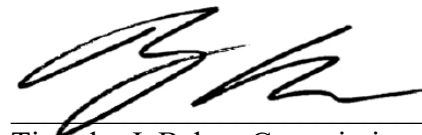
Mary Lu Jordan, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner



Timothy J. Baker, Commissioner

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<sup>1</sup> In the event that Northside chooses to refile its request to reopen, it should state with specificity the facts and circumstances it believes would justify reopening the final order and should include any relevant documentation with the request.

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