

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

**September 3, 2025**

SECRETARY OF LABOR  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),

v.

DOE RUN RESOURCES DBA  
DOE RUN COMPANY,

Docket No. CENT 2025-0280  
A.C. No. 23-01800-617163

BEFORE: Jordan, Chair; and Baker, Commissioner

**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 May 22, 2025, the Commission received from the Doe Run Company (“Doe Run”) 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 April 8, 2025, and became a

final order of the Commission on May 8, 2025. Doe Run asserts that, on April 18, 2025, the mine's Safety Supervisor forwarded the assessment sheet noting the citations it intended to reopen, to its counsel. However, counsel for Doe Run was out of the office with intermittent access to cellular phone service and "does not recall seeing" this communication. Counsel received the final termination of the four citations on May 13, 2025, at which point he confirmed that the citations had become final orders on May 8, 2025.

According to Doe Run, the Safety Supervisor and Doe Run's counsel have since discussed and agreed to an improved process to ensure that future penalties are timely contested. Specifically, once the Safety Supervisor sends an assessment to counsel he will confirm that it has been received if he receives no confirming email. When counsel receives an assessment from the mine's office, he will confirm receipt and include a reminder of the date when a contest is due and will have his legal assistant add that to the calendar the assistant maintains. Thus, the operator asserts that it has established improvements in its office procedures to ensure that the dates for future filings are not missed.

The Secretary does not oppose the request to reopen. She confirms that Doe Run has no delinquent penalties and has a good history of timely contesting penalties in the past. Further, she acknowledges that once Doe Run and its counsel realized that the citations had become final orders, Doe Run filed its motion to reopen 9 days later. Despite not opposing the motion to reopen, however, the Secretary urges the operator to take steps to ensure that future penalty contests are timely filed.

Having reviewed Doe Run's request and the Secretary's response, we find that the operator has demonstrated good cause to justify reopening, in particular because it has explained what steps it has taken to ensure future errors will not occur. *Shelter Creek Capital, LLC*, 34 FMSHRC 3053, 3054-55 (Dec. 2012) (holding that operators must explain in detail what steps they have taken to ensure errors will not occur, to justify relief). 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:

R. Henry Moore, Esq.  
Fisher & Phillips LLP  
Six PPG Place, Suite 830  
Pittsburgh, PA 15222  
[hmoore@fisherphillips.com](mailto:hmoore@fisherphillips.com)

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](mailto:Paige.Thomas.a@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](mailto:Garris.Melanie@DOL.gov)

Chief Administrative Law Judge Glynn F. Voisin  
Federal Mine Safety Health Review Commission  
1331 Pennsylvania Avenue, NW Suite 520N  
Washington, DC 20004-1710  
[GVoisin@fmshrc.gov](mailto:GVoisin@fmshrc.gov)