

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

September 3, 2025

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

HARD ROCK SAND AND GRAVEL

Docket No. CENT 2025-0288
A.C. No. 16-01553-613150

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 June 2, 2025, the Commission received from Hard Rock Sand and Gravel (“Hard Rock”) 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 January 17, 2025, and

became a final order of the Commission on February 17, 2025. A delinquency notification was mailed to the operator on April 3, 2025.

Hard Rock asserts that its failure to timely file the notice of contest was due to it waiting to see the impact of previous citations from June of 2024 that it had contested. According to the operator, once it learned the outcome of those citations, it agreed that it needed to contest the citations in question from November of 2024. Hard Rock separately claims that it missed an email from its bookkeeper, which would have let them know that it received the proposed assessment for November of 2024. 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.

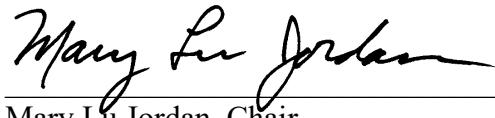
We hold that the reasons Hard Rock has provided in support of its motion to reopen are not sufficient to justify reopening. By Hard Rock's own admission, it did not decide to contest when the proposed penalties were received but changed its mind after the seeing the impact of previously contested citations. Certainly, "[a] change of mind is not adequate grounds to reopen a final judgement pursuant to Rule 60(b)." *Cold Spring Granite*, 36 FMSHRC 1559, 1560 (June 2014), citing *Brzeczek v. Centerior Energy*, 221 F.3d 1333, 1333-34 (6th Cir. 2000). See, e.g., *Ackermann v. United States*, 340 U.S. 193, 198 (1950).

To the extent that the operator claims its delay is attributable to a "missed" email from its bookkeeper, we find that the operator failed to provide adequate justification to support reopening. In *Higgins Stone Co.*, the Commission held that

[a]n operator seeking to reopen a proceeding . . . bears the burden of establishing an entitlement to extraordinary relief. At a minimum, the applicant for such relief 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 and for any delays in seeking relief once the operator became aware of the delinquency or failure. The operator must also identify which specific citations or orders in the assessment it wishes to contest upon reopening. Affidavits from persons involved in and knowledgeable of the situation and pertinent documents should be included with the request to reopen.

32 FMSHRC 33, 34 (Jan. 2010). Operators must also explain in detail what steps they have taken to ensure errors will not occur. *Shelter Creek Capital, LLC*, 34 FMSHRC 3053, 3055 (Dec. 2012). Hard Rock has offered no evidence about how it missed an email from its bookkeeper nor how it has adjusted its internal processes to ensure timely contest of any penalties from MSHA.

Accordingly, we deny Hard Rock's motion.

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Mary Lu Jordan, Chair

A handwritten signature in cursive script, appearing to read "Timothy J. Baker", written in black ink.

Timothy J. Baker, Commissioner

Commissioner Marvit, concurring:

I write to agree 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 denies reopening in its opinion because the operator has not alleged good cause or provided a factual accounting for its failure to timely contest the penalties. Though I believe the Commission lacks the authority to consider motions to reopen, I concur with the Majority in denying reopening in this matter.

A handwritten signature in black ink, appearing to read 'M. Marvit', is positioned above a horizontal line.

Moshe Z. Marvit, Commissioner

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