FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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September 3, 2025

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA) v. HEIDELBERG MATERIALS US CEMENT LLC	Docket No. LAKE 2025-0129 A.C. No. 12-00063-609727

BEFORE: Jordan, Chair; Baker and Marvit, Commissioners

ORDER

BY: Jordan, Chair; and Baker, Commissioner

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2024) ("Mine Act"). On February 3, 2025, the Commission received from Heidelberg Materials US Cement LLC ("Heidelberg") 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 November 14, 2024, and became a final order of the Commission on December 16, 2024. A delinquency notification was mailed to the operator on January 29, 2025.

Heidelberg's safety manager claims that the operator never received the Proposed Assessment at the mine. The Secretary opposes the request to reopen. She asserts that MSHA sent the Proposed Assessment to Heidelberg's address of record and offers proof of delivery confirmation and other documentation.

We note that MSHA's Legal ID Report shows the address of record for the mine and operator to be 200 Mill Creek Road, Mitchell, IN 47446, and that the last effective date for Operator's address was August 15, 2024. *See* Attachment D of Secretary's response. MSHA records do not evidence any undeliverable or returned mail for Operator. U.S.P.S. records also reflect that Heidelberg's plant manager signed for the delivery of the Assessment. *See* Attachment B, D.

Operators must give specific reasons and detailed explanations for their failure to file timely contests. *See, e.g.*, *Potter South East, LLC*, 45 FMSHRC 152, 153-54 (Mar. 2023). Providing vague or cursory explanations is reason enough to deny a motion to reopen. *Southwest Rock Prods, Inc.*, 45 FMSHRC 747, 748 (Aug. 2023) ("a grant of relief under Rule 60(b) requires more than 'general assertions or conclusory statements as to why an operator failed to timely contest'"). We find that Heidelberg's stated justification for reopening is cursory and contradicted by the evidence. This is insufficient to justify relief under Rule 60(b).

Accordingly, we deny Heidelberg's motion.

Mary Lu Jordan, Chair

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.

Moshe Z. Marvit, Commissioner

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