FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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September 3, 2025

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), v. GENTRY MOUNTAIN MINING, LLC,	Docket No. WEST 2025-0285 A.C. No. 42-02263-616004

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 17, 2025, the Commission received from Gentry Mountain Mining, LLC ("Gentry") 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).

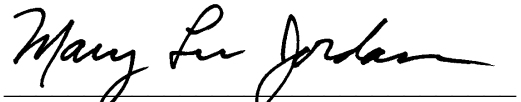
Records of the Department of Labor's Mine Safety and Health Administration ("MSHA") indicate that the Proposed Assessment was delivered on March 10, 2025, and became

a final order of the Commission on April 9, 2025. Gentry asserts that extraordinary circumstances justify reopening due to a lack of timely notice, contending that MSHA sent the Proposed Assessment Form to an outdated address in Salt Lake City rather than the operator's current address in Huntington, UT.

According to Gentry, the form was sent to an old Salt Lake City address of Gentry Mountain Mining, LLC. Gentry's current address, P.O. Box 300, Huntington, UT 84528, is registered with MSHA and has been used in all recent correspondence for the last few years. The operator insists it was unaware that the Proposed Assessment Form had been sent to Salt Lake City on March 10th, 2025. Gentry states that it is unsure why the Proposed Assessment Form was sent to the wrong address. The new address has been used for several years now and the Proposed Assessment Forms for other dockets have been sent to the new address for many years now. The operator claims that it asked MSHA why the Proposed Assessment Form was sent to the old address, and that MSHA stated that a new employee had started working for MSHA and sent the Proposed Assessment Form to the old address. Gentry did request a hearing within 30 days of when it became aware of the Proposed Assessment.

According to the Secretary, the address to which MSHA had sent the Proposed Assessment (the Salt Lake City address) was one of several addresses provided by Gentry on its Legal Identity Report, Form 2000-7, that was effective at the time the Proposed Assessment was sent to Gentry. Gentry has since updated its Legal ID Report and no longer lists the Salt Lake City address. For these reasons, 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.

Having reviewed Gentry's request and the Secretary's response, we find that the the operator acted in good faith and with excusable neglect. We take particular note of the fact that the operator has updated its Legal ID Report to no longer list the Salt Lake City address, to help ensure that future Proposed Assessments are received. We also emphasize that Gentry's attempt to contest the Proposed Assessment was only one day late, on April 10, 2025. *See* Sec'y Resp. at Attachment C (letter from MSHA to operator explaining reasons for denying hearing request). 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

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