FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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September 3, 2025

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), v. MINGO LOGAN COAL, LLC	Docket No. WEVA 2025-0371 A.C. No. 46-09029-617426

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 20, 2025, the Commission received from Mingo Logan Coal, LLC ("Mingo Logan") 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.

According to Mingo Logan, it's failure to contest a 104(b) Order arose from a misunderstanding it had regarding whether MSHA would necessarily assess a penalty when issuing the 104(b) Order and whether it would process the penalty with the underlying citation.

The operator states that, on February 10, 2025, it requested a settlement conference, which occurred on February 25, 2025. During the conference, Mingo Logan contested the facts asserted in the order in question and explained the actions it took to correct the cited conditions. MSHA subsequently informed the operator that it elected to sustain the Order as issued. Importantly, MSHA notified Mingo Logan that "[p]articipation in this conference did not waive [its] right to a formal hearing with the Federal Mine Safety and Health Review Commission concerning these citations and/or orders."

Upon receiving this notification, the operator believed the Order would be contested along with the related citation when the penalty was assessed. On April 2, 2025, MSHA issued a Proposed Assessment for Citation 9595090. The Proposed Assessment noted that a section 104(b) order was associated with the citation, but it did not identify the order or propose a penalty for it. Mingo Logan contested the Proposed Assessment on April 17, 2025, and later retained counsel in anticipation of the civil penalty proceeding, docketed as WEVA 2025-0309. At that point, Mingo Logan learned that the validity of the Order would not be addressed in that proceeding.

Mingo Logan explains that, before consulting counsel, it did not realize MSHA sometimes issues 104(b) orders without assessing a penalty, which causes them to become final after 30 days. The operator states it was surprised by this practice and maintains it fully intended to contest Order No. 9595091. In fact, it requested a conference shortly after the order was issued. Mingo Logan asserts that had it understood the procedure, it would have filed a contest within 30 days under 30 U.S.C. § 815(d). To avoid similar mistakes, the operator has committed to contesting any future 104(b) orders within the statutory deadline. See Mann Affidavit, Exhibit A, ¶ 11.

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 Mingo Logan's request and the Secretary's response, we find that the operator has provided facts sufficient 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

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