

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N  
WASHINGTON, D.C. 20004-1710

**September 8, 2021**

SECRETARY OF LABOR, :  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA) :  
 :  
v. : Docket No. WEST 2021-0182  
 : A.C. No. 04-00099-525919  
BLUE MOUNTAIN MINERALS :  
 :

BEFORE: Traynor, Chair; Althen and Rajkovich, Commissioners

ORDER

BY THE COMMISSION:

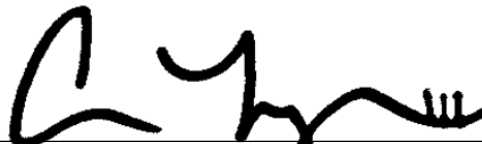
This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”). On April 15, 2021, the Commission received from Blue Mountain Minerals (“Blue Mountain”) a motion seeking to reopen a penalty assessment that had become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

Under section 105(a), 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).

The Secretary for the Department of Labor’s Mine Safety and Health Administration (“MSHA”) initially filed a response to Blue Mountain’s request on April 21, 2021, stating that he does not oppose the motion. On May 10, 2021, the Secretary filed a supplemental response conceding that the operator had in fact timely requested a hearing on December 23, 2020, but that MSHA’s mail processing had inadvertently delayed discovery of the timely contest. Upon its discovery, MSHA processed the contest, and a penalty petition was filed on April 20, 2021, and docketed as WEST 2021-0184.<sup>1</sup> The Secretary considers this motion to reopen as moot, as the underlying violations are under contest.

Because the Secretary has processed this case as timely contested, we conclude that Blue Mountain’s motion to reopen is moot here. *See Olmos Contracting I, LLC*, 39 FMSHRC 2015, 2019 (Nov. 2017) (“As this matter was timely contested and has now been resolved, the motion to reopen this case is moot.”); *Kembel Sand & Gravel*, 33 FMSHRC 1153, 1153-54 (June 2011). Accordingly, this motion is dismissed.



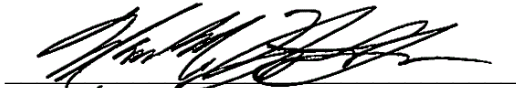
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Arthur R. Traynor, III, Chair



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William I. Althen, Commissioner



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Marco M. Rajkovich Jr., Commissioner

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<sup>1</sup> On July 19, 2021, The Chief Judge issued an Order to Show Cause for Blue Mountain’s failure to file a response to the Secretary’s Petition for Assessment of Civil Penalty in Docket No. WEST 2021-0184. To date, a response from the operator has not been received.

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