

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710

September 9, 2024

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. CENT 2024-0017
v.	:	A.C. No. 41-05051-570029
	:	
COOPER STONE, LLC	:	

BEFORE: Jordan, Chair; Baker, and Marvit, 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. (2018) (“Mine Act”). On November 7, 2023, the Commission received from Cooper Stone, LLC (“Cooper Stone”) 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 to Cooper Stone’s address of record on January 23, 2023, and became a final order of the Commission on February 22, 2023.

Cooper Stone asserts that it never received the assessment paperwork because the mine office is in a “high crime” area, and that the operator has taken steps to address the issue by changing the operation’s mailing address to the owner’s home address. Cooper Stone explains that it emailed MSHA in April 2023 to request a status update on various citations, including those at issue, and to state that it wished to contest them. When MSHA’s response made no reference to the citations at issue, the operator assumed they had been properly contested. Cooper Stone asserts that it learned the citations had not been properly contested on October 26, 2023, and moved to reopen the assessment the next day.

The Secretary opposes the motion. With respect to Cooper Stone’s assertion that it never received the assessment, the Secretary notes that the assessment was successfully delivered to the operator’s address of record on January 23, 2023.¹ She also notes that the operator indicated an intent to change its address of record to resolve mail delivery problems as far back as April 2021 (*Cooper Stone LLC*, 43 FMSHRC 515 (Dec. 2021)), and yet its address had not been updated as of December 15, 2023.² With respect to Cooper Stone’s asserted belief the citations had been contested, the Secretary claims the operator should have known how to properly contest a proposed assessment, as Cooper Stone had been in operation for over 30 years and every assessment includes contest instructions. Finally, the Secretary asserts that Cooper Stone failed to explain why it only became aware of the issue in October 2023, six months after MSHA’s April 10, 2023 delinquency notification. In light of these considerations, the Secretary alleges that Cooper Stone has shown an inadequate internal processing system and a lack of good faith, and has failed to justify reopening.

The Commission has long held that where a failure to contest a proposed assessment results from an inadequate or unreliable internal processing system, the operator has not established grounds for reopening the assessment. *See, e.g., Pinnacle Mining Co. LLC*, 30 FMSHRC 1066, 1067 (Dec. 2008) (denying motion to reopen where an operator condoned a mail delivery system which predictably resulted in missed deadlines). Additionally, we have held that a repeated failure to update one’s address of record would indicate an inadequate internal process. *ITAC*, 46 FMSHRC 80, 82 (Feb. 2024).

Here, Cooper Stone determined in April 2021 that it had systemic mail delivery issues that could likely be resolved by changing its mailing address, but still had not resolved the issue by January 2023 when the assessment at issue was delivered. In other words, *two* system inadequacies contributed to Cooper Stone’s failure to timely contest the January 2023

¹ USPS records indicate the assessment was signed for by “N Abrham,” most likely the mine’s Operations Manager Neil Abraham. *Sec’y Opp. Exs. B, C*.

² While the operator’s address of record had not been updated as of the Secretary’s filing (December 15, 2023), MSHA records show that the mine’s legal address has since been changed to the owner’s home address. The date on which this occurred is not in the record.

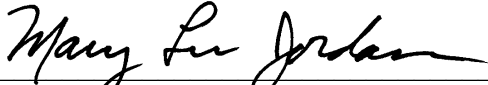
assessment: the mail system itself, and the failure to correct it.³ In light of this, Cooper Stone's assertion that it never received the assessment does not constitute good cause to reopen the final penalty.

Furthermore, a party seeking to reopen a final penalty bears the burden of showing that it is entitled to such relief, through a detailed explanation of its failure to timely respond. *E.g.*, *Revelation Energy LLC*, 40 FMSHRC 375, 375-76 (Mar. 2018). We find that certain elements of Cooper Stone's explanation lack sufficient detail to justify reopening. First, the operator has failed to reconcile the owner's claim that he never received the assessment with documentation indicating that the assessment was signed for by the mine's operations manager. Second, the operator has not adequately explained how it ultimately learned that the assessment had not been properly contested, or why it did not become aware of the issue until six months after MSHA issued a delinquency notice.⁴ *See Highland Mining Co.*, 31 FMSHRC 1313, 1317 (Nov. 2009) (motions filed more than 30 days after an operator receives a delinquency notice should include an explanation for the delay).

³ We also agree with the Secretary that the operator's apparent ignorance of the proper procedure for contesting a proposed assessment *despite over 30 years of operation* may indicate further inadequacies with the operator's internal processing system.

⁴ Cooper Stone implies that between May and October it believed the assessment *had* been properly contested, because MSHA's May 26 response email made no mention of the relevant citations. However, we question whether it was reasonable for a mine operator of over 30 years' experience, who has been sent a delinquency notice indicating that an assessment has become final, to interpret a *non-response* to an *informal email* stating that an operator wishes to contest an assessment as confirmation that the assessment had been properly contested. This is particularly true where the email which contained MSHA's non-response regarding the citations at issue specifically noted that contest proceedings regarding other assessments would not begin until MSHA had received the proper paperwork.

Having reviewed Cooper Stone's request and the Secretary's response, we find that the operator has not demonstrated good cause for reopening the captioned proceeding. Accordingly, we deny Cooper Stone's motion.



Mary Lu Jordan, Chair



Timothy J. Baker, Commissioner



Moshe Z. Marvit, Commissioner

Distribution:

Micah Flippen
Cooper Stone LLC
1003 Hemingway Drive
College Station, TX 77845
Micah.flippen@cooperstone.com

April Nelson, Esq.
Associate Solicitor
Office of the Solicitor
U.S. Department of Labor
Division of Mine Safety and Health
201 12th Street South, Suite 401
Arlington, VA 22202
Nelson.April@dol.gov

Emily Toler Scott, Esq.
Counsel for Appellate Litigation
Office of the Solicitor
U.S. Department of Labor
Division of Mine Safety and Health
201 12th Street South, Suite 401
Arlington, VA 22202
scott.emily.t@dol.gov

Melanie Garris
USDOL/MSHA, OAASEI/CPCO
201 12th Street South, Suite 401
Arlington, VA 22202
Garris.Melanie@DOL.GOV

Chief Administrative Law Judge Glynn F. Voisin
Federal Mine Safety Health Review Commission
Office of the Chief Administrative Law Judge
1331 Pennsylvania Avenue, NW Suite 520N
Washington, DC 20004-1710
GVoisin@fmshrc.gov