

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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September 15, 2025

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),

v.

CONSOL PENNSYLVANIA
COAL COMPANY, LLC

Docket No. PENN 2025-0041
A.C. No. 36-10045-603901

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. (2024) (“Mine Act”). On November 20, 2024, the Commission received from Consol Pennsylvania Coal Company, LLC (“Consol”) a motion seeking to reopen a penalty assessment that had appeared to become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

Consol received a proposed penalty assessment from the Secretary on October 10, 2024, and filed a notice of contest with the Secretary thirty-two days later, on November 11, 2024. Consol asserts that the assessment was timely contested prior to a November 12 deadline and therefore did not become a final order.¹ The Secretary counters that the assessment became a final order on November 9 and was therefore not timely contested.

Section 105(a) provides an operator with thirty days from receipt of a proposed penalty assessment to notify the Secretary that it wishes to contest the proposed assessment. If the operator fails to timely provide such notification, the assessment becomes a final order of the Commission. 30 U.S.C. § 815(a). Notably, however, the Mine Act does not specify a method of

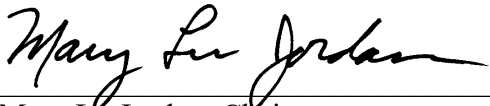
¹ Consol argues in the alternative that it *reasonably believed* its contest was timely, therefore reopening the final order is justified consistent with Rule 60(b) of the Federal Rules of Civil Procedure. The Secretary asserts that the assessment became a final order but takes no position as to whether reopening that final order is justified. Consol also claims that it did not receive the assessment until October 14, 2024, however, U.S. Postal Service records confirm that the assessment was delivered to an individual on October 10.

computing time. Therefore, computation of this thirty-day contest window is governed by Rule 6(a) of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 6(a).

Rule 6(a) states in relevant part that if the last day of a prescribed period “is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.”² Fed. R. Civ. P. 6(a)(1)(C). Accordingly, a proposed penalty assessment becomes a final order of the Commission if an operator fails to contest the assessment by the thirtieth day, *or, if that thirtieth day is a weekend or federal holiday*, if an operator fails to contest the assessment by the close of the next business day.

Here, the thirtieth day after receipt of the assessment was Saturday, November 9, 2024. Furthermore, a federal holiday occurred on Monday, November 11, 2024. Accordingly, the contest period would have continued to run until the close of Tuesday, November 12, 2024.

We conclude that the proposed penalty assessment did not become a final order of the Commission, because Consol timely contested the proposed assessment on November 11, 2024. This obviates any need to invoke Rule 60(b), under which the Commission may relieve a party from a final order. Accordingly, the operator’s motion to reopen is moot, and this case is remanded 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.



Mary Lu Jordan, Chair



Timothy J. Baker, Commissioner



Moshe Z. Marvit, Commissioner

² This is generally consistent with Commission Procedural Rule 29 C.F.R. § 2700.8(c).

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