

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

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

**September 25, 2024**

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. SE 2024-0023
	:	A.C. No. 08-01453-578347
GARCIA MINING COMPANY, 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 October 20, 2023, the Commission received from Garcia Mining Company, LLC (“Garcia”) 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).

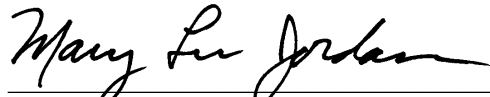
Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessment was delivered on June 12, 2023, and became a final order of the Commission on July 12, 2023.

Garcia asserts that it timely contested the proposed penalty assessment on June 14, 2023, two days after receipt of the assessment. The operator provided email evidence showing that Counsel’s office submitted its contest directly to MSHA’s Civil Penalty Office via email on that date.<sup>1</sup> Nevertheless, Garcia learned that the assessment had not been docketed by MSHA as contested when it received a delinquency notice dated August 28, 2023. On September 22, 2023, Counsel notified MSHA that it had received a delinquency notice in spite of its timely filed contest and requested that the Penalty Office reopen the assessment. On October 4, 2023, MSHA informed Counsel for Garcia that it would have to file a motion to reopen. Garcia’s motion to reopen was filed on October 20, 2023. 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 in accordance with MSHA’s regulations at 30 C.F.R. § 100.7 and the Commission’s procedural rules. The Secretary further suggests that the operator’s motion be dismissed as moot.

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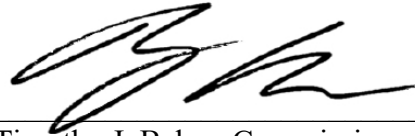
<sup>1</sup> Garcia also timely contested the underlying citations, which have been docketed by the Commission and assigned to a Commission Administrative Law Judge.

Having reviewed Garcia’s request and the Secretary’s response, we conclude that the proposed penalty assessment did not become a final order of the Commission because the operator timely contested the proposed assessment. Section 105(a) states that if an operator “fails to notify the Secretary that he intends to contest the . . . proposed assessment of penalty . . . the citation and the proposed assessment of penalty shall be deemed a final order of the Commission.” 30 U.S.C. § 815(a). Here, Garcia notified the Secretary of the contest. This obviates any need to invoke Rule 60(b). *See Chad Buus, Employed By U.S. Steel - Minnesota Ore Operations*, 46 FMSHRC 86, 86-87 (Feb. 2024); *San Benito Supply*, 40 FMSHRC 346, 346–47 (Mar. 2018). 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.



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Mary Lu Jordan, Chair



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Timothy J. Baker, Commissioner



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Moshe Z. Marvit, Commissioner

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