

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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August 12, 2026

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

v.

RUBY GOLD, INC.

Docket No. WEST 2026-0167
A.C. No. 04-03108-632335

BEFORE: Rajkovich, Chair; Jordan and Baker, Commissioners

ORDER

BY: Rajkovich, Chair, and Jordan, Commissioner

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2024) (“Mine Act”). On April 1, 2026, the Commission received from Ruby Gold, Inc. (“Ruby”) 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 U.S. Postal Service (“USPS”) attempted delivery of the proposed assessment to Ruby’s address of record on December 8, 2025. USPS marked the assessment

“addressee unknown” and returned the package to MSHA. The assessment became a final order of the Commission on January 7, 2026. A delinquency letter was mailed to Ruby on February 24, 2026.

Ruby asserts that it never received the proposed assessment or delinquency letter because the address of record to which they were mailed was incorrect. It learned the assessment had become final in March 2026, after reaching out to MSHA for a status update on the relevant citations, and promptly moved to reopen the proceeding. The Secretary opposes the motion, arguing that Ruby has failed to justify relief. He notes that Ruby was cited for failing to update its address of record on September 9, 2025, three months before the assessment was mailed, but failed to properly update its Legal ID Report until March 2026.

Significantly, Ruby *attempted* to update its address of record three times: on September 9, 2025 (the day it was cited), again on September 22, 2025, and a third time on January 7, 2026. Each time, MSHA found insufficiencies and rejected the Legal Identification Form. Ruby was finally able to successfully correct its address of record on March 16, 2026. Presumably, if its first or second attempt to submit an updated Legal Identification Form had been successful, Ruby would have received (and timely contested) the proposed assessment. The Secretary concedes that Ruby “acted in good faith” to try and resolve the issue that ultimately led to its failure to timely contest the proposed assessment.¹ Sec’y Opp. at 5.

Ruby also notes that it was an “actively engaged” party that sought a conference on the citations and requested updates from MSHA. MTR at 1. Ruby represents that citations during the relevant inspection were issued to both Ruby (the mine owner) and the mine operator, and that based on communications in September 2025, Ruby was initially under the impression that the operator had requested a conference on behalf of both parties. Nevertheless, Ruby reached out to MSHA for a status update on the conference request in November 2025 and was informed that the conference was still pending. On March 11, 2026, Ruby again inquired into the status of the conference and learned it had proceeded without Ruby’s knowledge or participation. Ruby contacted multiple MSHA personnel and was ultimately referred on March 24 to the Office of Assessments, who confirmed that assessments had been issued and returned as undeliverable. MTR at 2.

Failure to keep one’s address up to date can be grounds for denying a motion to reopen, particularly if it indicates an inadequate or unreliable internal processing system. *E.g.*, *Kiewit Mining Group*, 47 FMSHRC 287, 288 (Apr. 2025); *Cooper Stone, LLC*, 46 FMSHRC 808, 809-10 (Sept. 2024). However, we have granted motions to reopen where the operator’s failure to update its address was the result of a single inadvertent failure rather than a systemic issue. *E.g.*, *Dyno Nobel*, 46 FMSHRC 397, 398-99 (June 2024); *ITAC*, 46 FMSHRC 80, 81 (Feb. 2024). Here, records submitted by the Secretary indicate that the address of record was out of date because a new entity acquired controlling interest of Ruby in July 2025 and had not yet

¹ The Secretary nevertheless argues that Ruby has not justified relief because Ruby could have been more prompt in resubmitting a corrected form. Sec’y Opp. at 5. By the same token, however, the Secretary knew that Ruby was in the process of updating its address and could have been more proactive in ensuring that assessments reached the correct address while the paperwork was being finalized.

updated the mine's Legal Identification Form. Sec'y Opp. Attach. F at 2 (emails between Ruby and MSHA). This suggests a mistake arising from a singular incident, rather than a systemic or recurring issue.

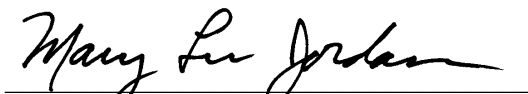
The Commission has also recognized that “[a] movant’s good faith and intent to contest are both relevant in determining whether the movant has demonstrated good cause to reopen a final assessment.” *Explosive Contractors, Inc.*, 46 FMSHRC 965, 966 (Dec. 2024). Here, Ruby made repeated good faith (if initially unsuccessful) efforts to address the issue that ultimately contributed to its failure to timely contest the assessment, and showed continued interest in contesting the assessment through status update requests to MSHA.

As a final matter, the Commission has previously held that “[m]otions to reopen received within 30 days of an operator’s receipt of its first notice from MSHA that it has failed to timely file a notice of contest will be presumptively considered as having been filed within a reasonable amount of time.” *Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009). Here, Ruby learned the assessment had become final on March 11 and moved to reopen on April 1.

Having reviewed Ruby’s request and the Secretary’s response, we find that Ruby’s failure to timely contest the assessment was the result of a mistake in failing to update its address after a change in corporate control rather than a systemic concern, and that even before the failure to timely contest, Ruby made good faith efforts to remedy the underlying issue. 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.



Marco M. Rajkovich, Jr., Chair



Mary Lu Jordan, Commissioner

Commissioner Baker, concurring:

I join the majority in granting the motion to reopen but write separately to stress the importance of operator's duty to maintain an accurate address of record with MSHA. In *ITAC*, the majority reopened a case where the operator asserted that it had failed to respond because it had not updated its official address with MSHA. 46 FMSHRC 80 (Feb. 2024) (Baker, dissenting). I dissented in that case, arguing that an independent violation of the Mine Act and its regulations did not amount to a "good cause" for reopening. *Id.* at 83.

Specifically, I noted that section 109(d) of the Act requires each operator of a coal or other mine to file with the Secretary of Labor the name and address of such mine, the name and address of the person who controls or operates the mine, and any revisions in such names or addresses. 30 U.S.C. § 819(d). Under the authority granted by the Act, the Secretary has promulgated regulations requiring an operator to provide MSHA with, among other things, its correct address of record. 30 C.F.R. § 41.11. If any changes occur with respect to this information, an operator is required to notify MSHA of the change within 30 days of its occurrence. 30 C.F.R. § 41.12. Any failure by an operator to notify MSHA in writing of a change is considered a violation of section 109(d) of the Act and subject to a civil penalty as provided in section 110 of the Act. 30 C.F.R. § 41.13. The regulations further provide:

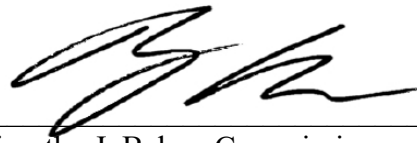
Service of documents upon the operator may be proved by a post office return receipt showing that the documents could not be delivered to such address of record because the operator had moved without leaving a forwarding address or because delivery was not accepted at that address, or because no such address existed.

30 C.F.R. § 41.30.

In light of these statutory and regulatory requirements, the Commission has denied motions to reopen, in part, because the operator failed to maintain its correct address of record. *See, Sw. Rock Prod., Inc.*, 45 FMSHRC 747, 748-49 (Aug. 2023). In addition, the Commission has previously 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., Shelter Creek Capital, LLC*, 34 FMSHRC 3053, 3054 (Dec. 2012); *Oak Grove Res., LLC*, 33 FMSHRC 103, 104 (Feb. 2011); *Double Bonus Coal Co.*, 32 FMSHRC 1155, 1156 (Sept. 2010).

In the instant case, it is undisputed that the Secretary sent the assessment to the address of record provided by the operator. However, I would distinguish this case from *ITAC* because when the assessment was mailed here, Ruby was already engaged in the process of updating its mailing address. That MSHA mailed the assessment before that process was completed was not the result of a lack of diligence on Ruby's part, but instead because of an unfortunate quirk of timing.

For these reasons, I join the majority in finding that Ruby established good cause and in granting Ruby's motion to reopen.

A handwritten signature in black ink, appearing to read 'TJ Baker', written over a horizontal line.

Timothy J. Baker, Commissioner

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