FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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April 23, 2026

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)	Docket No. YORK 2025-0043 A.C. No. 37-00068-610998
v.	Docket No. YORK 2025-0044 A.C. No. 37-00212-611000
MATERIAL SAND & STONE CORP.,	

BEFORE: Rajkovich, Chair; Jordan, Baker, and Marvit, Commissioners

ORDER

BY: Rajkovich, Chair; Jordan and Baker, Commissioners

These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2024) ("Mine Act"). On August 17 and 18, 2025, the Commission received two motions from Material Sand and Stone Corporation ("Material") seeking to reopen penalty assessment proceedings and relieve it from two Default Orders entered against it.[1]

On April 9, 2025, the Chief Administrative Law Judge issued two Orders to Show Cause in response to Material's perceived failure to answer the Secretary of Labor's February 7, 2025 Petitions for Assessment of Civil Penalty. By their terms, the Orders to Show Cause were deemed Default Orders on May 12, 2025, when it appeared that the operator had not filed answers within 30 days.

In both motions, Material states that "there was a time when [the operator] did not receive any Petitions or Show Cause Orders" due to a change of personnel in the Warrendale District Office of the Department of Labor's Mine Safety and Health Administration ("MSHA"). In the motion pertaining to Docket No. YORK 2025-0044, it additionally submits that it "never even received the option to contest."

The Secretary of Labor opposes the motions. With respect to the operator's claim that it never received the option to contest, the Secretary states that the operator did, in fact, receive the option to contest because it was served with the proposed penalty assessment, and the operator signed for the assessment. She asserts that, moreover, the operator subsequently contested the assessment.

[1] For the limited purpose of addressing these motions to reopen, we hereby consolidate Docket No. YORK 2025-0043 and Docket No. YORK 2025-0044, involving similar procedural issues. 29 C.F.R. § 2700.12.

With respect to both proceedings, the Secretary also submits that the show cause orders were properly issued to the operator. The Secretary notes that Show Cause Orders are sent by the Commission rather than by MSHA, so that personnel changes in an MSHA district office are irrelevant to that process. She further maintains that copies of the underlying penalty petitions and notices of appearance were also sent to the operator. The operator did not respond to any of these filings. The Secretary notes that Material has had prior experiences with default but, nonetheless, has failed to correct its internal processes.

The Judge's jurisdiction in this matter terminated when the default occurred. 29 C.F.R. § 2700.69(b). Under the Mine Act and the Commission's procedural rules, relief from a Judge's decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2)(A)(i); 29 C.F.R. § 2700.70(a). If the Commission does not direct review within 40 days of a decision's issuance, it becomes a final decision of the Commission. 30 U.S.C. § 823(d)(1). Consequently, the Judge's orders here have become final decisions of the Commission.

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""); *Jim Walter Res., Inc*., 15 FMSHRC 782, 786-89 (May 1993). 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 will be permitted. *See Coal Prep. Servs., Inc*., 17 FMSHRC 1529, 1530 (Sept. 1995).

Material states that there was a time when the operator did not receive penalty petitions or show cause orders. However, it does not specify that it failed to receive show cause orders in these proceedings. A review of Commission records reveals that the Commission properly served the Orders to Show Cause on the operator. *Cf. Material Sand & Stone Corp.*, 48 FMSHRC ___, No. YORK 2025-0020 (April 3, 2026) (finding the operator's motion moot where the Commission did not properly serve the operator with the show cause order). The operator's motions contain no explanation for its failure to respond. For example, there are no affidavits attesting to the operator's non-receipt of the Commission's Orders.

We conclude that in the absence of a sufficient explanation, the operator has not demonstrated good cause for its failure to timely respond. *See Higgins Stone Co*., 32 FMSHRC 33, 34 (Jan. 2010) (requiring that "[a]t a minimum, the applicant must provide all known details, including relevant dates and persons involved, and a clear explanation that accounts, to the best of the operator's knowledge, for the failure to submit a timely response."). Simply stating that the Orders were not received is not sufficient. *See Southwest Rock Prods., Inc.*, 45 FMSHRC 747, 748 (Aug. 2023) ("a grant of relief under Rule 60(b) requires more than "'general assertions or conclusory statements as to why an operator failed to timely contest'"); *Leroy's Excavating, Inc.*, 48 FMSHRC ___, No. CENT 2025-0031 (Mar. 9, 2026) (denying relief from default when operator provided general statement that it had not received show cause order). Therefore, the motions are denied.

Having reviewed the operator's requests and the Secretary's responses, we conclude that the operator has failed to establish good cause for a failure to timely file responses to the Commission's Orders to Show Cause. The motions are denied.

Marco M. Rajkovich, Jr., Chair

Mary Lu Jordan, Commissioner

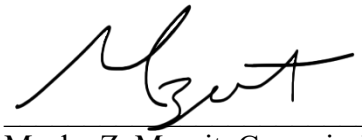
Timothy J. Baker, Commissioner

Commissioner Marvit, concurring:

I write to agree with the Majority in this case for the reasons set forth below.

In *Explosive Contractors*, 46 FMSHRC 965 (Dec. 2024), I dissented and explained that Congress did not grant the Commission the authority to reopen final orders under section 105(a) of the Mine Act. The Commission's repeated invocation of Federal Rule of Civil Procedure 60(b) cannot overcome the statutory language. However, in *Belt Tech*, I explained in my concurrence that "the Act clearly states that to become a final order of the Commission, the operator must have received the notification from the Secretary." 46 FMSHRC 975 (citing *Hancock Materials, Inc*., 31 FMSHRC 537 (May 2009)). Taken together, these opinions stand for the proposition that the Commission may not reopen final orders under its statutory grant, but an operator may proceed if it has not properly received a proposed order.

In the instant case, as the Majority recounts, the Commission's orders became final. The Majority denies reopening in its opinion because the operator has not provided any explanation for its failure to respond to the Commission's Orders to Show Cause. Though I believe the Commission lacks the authority to consider motions to reopen, I concur with the Majority in denying reopening in this matter.



Moshe Z. Marvit, Commissioner

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