FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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May 7, 2026

SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA) v. MITSUBISHI CEMENT CORP.,	Docket No. WEST 2025-0190 A.C. No. 04-00157-615894

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

ORDER

BY: Rajkovich, Chair; Jordan and Baker, Commissioners

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2024) ("Mine Act"). On September 25, 2025, the Commission received a motion from Mitsubishi Cement Corporation ("Mitsubishi") seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it on June 30, 2025.

Previously, Mitsubishi had filed a timely contest of the civil penalty proposed for Citation No. 9890614. The Department of Labor's Mine Safety and Health Administration ("MSHA") thereafter served its Petition for Assessment of Penalty on Mitsubishi. The operator did not file an Answer to the Petition with the Commission as required.

On May 28, 2025, the Commission's Chief Administrative Law Judge issued an Order to Show Cause in response to Mitsubishi's failure. By its terms, the Order to Show Cause was deemed a Default Order on June 30, 2025, when the Commission did not receive a response.

Mitsubishi states that the Safety Superintendent "recently" accessed MSHA's Data Retrieval System and discovered that the citation was listed as a final order and delinquent. Mitsubishi requests that the Commission reopen that final order. Mitsubishi submits that it timely filed Answers, but provides no documentation of the filings.

The Secretary opposes the motion to reopen. She argues that the operator's allegations are not supported by the facts in the record, and that Mitsubishi failed to act swiftly to file the motion. She notes that Mitsubishi's motion lacks the clarity necessary to discern the precise dates about what Mitsubishi knew and when.

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).

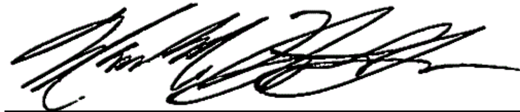
MSHA records indicate that on March 28, 2025, MSHA served the Petition for Assessment of Penalty on Mitsubishi's Safety Superintendent and Safety Specialist with a reminder that a response must be filed with the Commission within 30 days. Mitsubishi records show that on April 4, 2025, the Safety Superintendent emailed the Secretary's Conference and Litigation Representative with an Answer and a message stating that he would mail a hard copy of the Answer to the Commission. The Commission did not receive an Answer.

The Safety Superintendent also attests in an affidavit that when the Order to Show Cause was brought to his attention, he prepared an Answer on May 31, 2025. The Commission did not receive that Answer either.

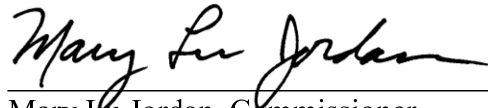
In summary, the operator acknowledges receipt of the Petition and the Order to Show Cause. The operator indicates that it properly filed an Answer to each of these issuances. The Commission did not receive an Answer either time. Thus, Mitsubishi's attempts to file an Answer appear to have failed twice.

The Commission has also recognized that expedient action in filing a motion to reopen after missing a deadline demonstrates an operator's good faith effort to comply with the Commission's requirements. *See, e.g., JW Constr. Co.*, 48 FMSHRC 50, 51 (Jan. 2026) (citing *Heidelberg Materials US Cement LLC*, 45 FMSHRC 1004, 1005 (Dec. 2023)). Here, however, Mitsubishi does not provide sufficient information regarding when its Safety Superintendent discovered that the penalty was a final order, stating only that its delinquency was discovered "recently." The Commission has denied motions to reopen when the operator failed to explain the reasons for a delay in filing its motion to reopen. *See*, *e.g*., *Left Fork Mining Co.*, 31 FMSHRC 8, 11 (Jan. 2009); *Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009) (holding that motions to reopen filed more than 30 days after receipt of notice of delinquency must explain the reasons why the operator waited to file a reopening request, and lack of explanation is grounds for the Commission to deny the motion).

We conclude that in the absence of a sufficient explanation, Mitsubishi 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."). Accordingly, the motion to reopen is denied.



Marco M. Rajkovich, Jr., Chair



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