

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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July 17, 2026

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

v.

PHOENIX INDUSTRIAL INC.

Docket No. WEST 2025-0068
A.C. No. 02-00843-607704

BEFORE: Rajkovich, Chair; Jordan and Baker, 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 May 5, 2025, the Commission received from Phoenix Industrial Inc. (“Phoenix”) a motion to reopen a penalty assessment proceeding and relieve it from a default order entered against it.

On February 5, 2025, the Chief Administrative Law Judge issued an Order to Show Cause in response to Phoenix’s failure to answer the Secretary of Labor’s Petition for Assessment of Civil Penalty. The order was deemed a default order on March 7, 2025, when Phoenix did not respond within 30 days.

Phoenix asserts that it timely mailed an answer to the Commission on January 3, 2025, and contemporaneously e-mailed a copy to opposing counsel. Resp’t Mot. Mem. at 2. According to Phoenix, the mailed answer was never delivered and was ultimately returned, and Phoenix did not discover either the Order to Show Cause or the ensuing default until April 2025. *Id.* at 2-3; Resp’t Reply at 2-3. Phoenix further represents that it remained in communication with a Conference and Litigation Representative during this period and believed the matter was proceeding, and that it acted promptly to investigate and seek reopening once it learned of the default. Resp’t Mot. Mem. at 2-3; Resp’t Reply at 2-6. Phoenix characterizes its failure to respond as the result of mistake or excusable neglect, rather than willful disregard.

The Secretary opposes reopening, arguing that Phoenix has not established entitlement to relief under Rule 60(b) of the Federal Rules of Civil Procedure. The Secretary contends that Phoenix failed to adequately explain why it did not respond to the Order to Show Cause and that its asserted lack of notice is insufficient in light of evidence that the order was served. Sec’y Opp’n at 4-6. The Secretary further argues that Phoenix’s explanation amounts to internal

processing or communication failures, which the Commission has repeatedly held do not constitute good cause for reopening. *Id.* at 5-6. In addition, the Secretary notes that Phoenix did not identify specific corrective measures to prevent recurrence of the circumstances leading to the default. *Id.* at 7.

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, the decision becomes a final decision of the Commission. 30 U.S.C. § 823(d)(1). Accordingly, the default order here is a final Commission decision.

In evaluating requests to reopen final orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure. 29 C.F.R. § 2700.1(b); *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993). Under that standard, a party must show mistake, inadvertence, surprise, or excusable neglect, or other circumstances justifying relief. The Commission has also emphasized that default is a harsh remedy and that, where a party demonstrates good cause for failing to timely respond, reopening may be appropriate to permit resolution on the merits. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Applying these principles, we acknowledge the Secretary's concerns regarding the sufficiency of Phoenix's explanation. The record reflects that the Order to Show Cause was issued and that Phoenix did not respond within the prescribed time. Moreover, the Commission has consistently held that inadequate or unreliable internal processing procedures do not establish good cause for reopening. *Marfork Coal Co., LLC*, 45 FMSHRC 463, 464-65 (June 2023); *Lone Mountain Processing, Inc.*, 35 FMSHRC 3342, 3346 (Nov. 2013) ("We have repeatedly and unequivocally held that a failure to contest a proposed assessment as a result of an inadequate or unreliable internal processing system does not establish grounds for reopening an assessment."); *Shelter Creek Capital, LLC*, 34 FMSHRC 3053, 3054 (Dec. 2012).

However, this case presents additional circumstances that weigh in favor of relief. Phoenix has provided a detailed account indicating that it attempted to timely file an answer at the outset of the proceeding and contemporaneously served opposing counsel. Resp't Mot. Mem. at 2. While the Secretary disputes the legal significance of these facts, they distinguish this matter from cases involving complete inaction or unexplained delay.

In its reply, Phoenix further explains that its failure to respond to the Order to Show Cause resulted from an inadvertent oversight tied to the Commission's email notice. Phoenix asserts that the email transmitting the Order to Show Cause and Default Order came from an unfamiliar sender and included a subject line referencing a "COVID-19 Default Order," which counsel did not recognize as pertaining to this case and therefore did not open at the time. Resp't Reply at 2-3.

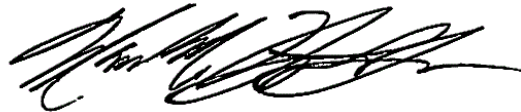
Phoenix states that it became aware of the order only later, upon reviewing correspondence after the Secretary's opposition, and promptly took steps to investigate and seek

reopening. *Id.* Phoenix characterizes this as an honest mistake rather than a failure to monitor the proceeding.

In addition, the record reflects that Phoenix acted with reasonable promptness once it became aware of the default, filing its motion to reopen shortly thereafter. Resp't Mot. Mem. at 3. There is no indication of intentional delay or contumacious conduct, and the Secretary has not asserted specific prejudice that would result from reopening beyond the ordinary burdens of litigation.

In these circumstances, we conclude that Phoenix has made a sufficient showing of mistake or excusable neglect to warrant reopening. Although Phoenix's explanation is not without shortcomings, the combination of its initial attempt to respond, its asserted lack of timely notice, and its prompt action upon learning of the default constitutes good cause under Rule 60(b).

Accordingly, in the interest of justice, we hereby reopen the proceeding and vacate the Default Order. 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.



Marco M. Rajkovich, Jr., Chair



Mary Lu Jordan, Commissioner



Timothy J. Baker, Commissioner

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