

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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June 10, 2026

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA), on
behalf of BREK PINKERTON

v.

RMC MINING DEVELOPMENT, LLC, a
corporation, Russ Myers, an individual,
AMERICAN MINING PROPERTIES,
LLC, a corporation, and MATTHEW
HEAD, an individual

Docket No. WEST 2024-0114
MSHA Case No.: RM-MD-2024-01

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 October 10, 2025, the Commission received from Matthew Wayn Head a motion seeking to reopen a discrimination proceeding and relieve him from the Default Order entered against him.

The original Respondent in this matter was RMC Mining Development, LLC (“RMC”). The Secretary subsequently learned that Head owned a 60% interest in the mine where the discrimination allegedly occurred through an entity known as American Mining Properties, LLC (“AMP”) and had hired RMC and an individual, Russ Myers, to operate the mine. Accordingly, on November 26, 2024, the Secretary amended the complaint to include APM, Head and Myers as Respondents. *See Sec’y Opp.* at 1-4.

On March 6, 2025, having received no answer to the amended complaint from any of the Respondents, the Judge issued an Order to Show Cause requiring the Respondents to explain the failure or risk default. When no responses had been filed by April 25, the Secretary moved for Default Judgment. Again, no responses were filed. On May 30, 2025, given the Respondents’ failure to respond to the amended complaint, the Judge’s order, or the Secretary’s motion, the Judge granted the motion and found the Respondents in default. The Judge’s Default Decision incorporated the factual allegations in the amended complaint, found that the Respondents had discriminated against Brek Pinkerton in violation of section 105(c) as alleged, assessed a civil

penalty of \$30,000, and imposed on the Respondents consequential and compensatory damages totaling \$88,497. Sec’y Opp. at 4-5; Order dated May 30, 2025.

Head is the only Respondent who has moved to reopen this proceeding. He asserts three justifications for reopening. First, he claims that he never received the amended complaint or the Order to Show Cause, because they were served electronically to a business email to which he no longer had access. Second, he claims that his lack of legal sophistication led him to mistakenly believe that the litigation would be handled by the corporate Respondents. Third, he claims that the Default Decision is void because the Judge exceeded his authority in awarding compensatory damages for emotional distress, and because the Judge’s constitutional authority to issue a penalty in the absence of a jury trial is currently under litigation in circuit courts. The Secretary opposes the motion to reopen. He counters all three proposed justifications offered by Head and further asserts that the motion to reopen should be denied as untimely.¹

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). Accordingly, the Judge’s Default Decision in this matter has become a final decision 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).

Having reviewed Head’s request and the Secretary’s response, we find no basis for relief. We agree with the Secretary that the motion was untimely. A motion to reopen filed less than 30 days after the moving party learns of its failure to timely respond is presumptively timely. Conversely, failing to explain why a motion to reopen was *not* filed within 30 days is sufficient grounds to deny the motion. *E.g., Highland Mining Co.*, 31 FMSHRC 1313, 1316-17 (Nov. 2009). Here, the Default Decision was issued on May 30, 2025. Notably, Head concedes that he received the Default Decision and understood at that point that he was a litigant in the proceeding. Mot. at 3. Head could have filed a petition for discretionary review with the Commission within 30 days. He did not. In fact, he did not move to reopen the proceeding until October 2025. He offers no explanation for this delay. This failure, in and of itself, provides sufficient grounds to deny the motion to reopen.

¹ The Complainant, Pinkerton, declined to file a response.

Furthermore, we do not find that Head has shown good cause to reopen this proceeding. First, we find that Head received adequate notice of the potential for default. He asserts that he did not receive the March 2025 Show Cause Order, as it was electronically served to an email address which he could no longer access. Mot. at 2. However, he concedes that the Secretary’s subsequent Motion for Default Judgment was delivered to his residence via certified mail on April 29, 2025. Reply at 2. Additionally, an Order to Submit Updated Contact Information was sent to his residence via certified mail on April 18, 2025. Prior to the issuance of the Default Decision, Head received actual notice of both the potential for default and the need to provide updated electronic contact information.² Head chose not to respond to either.

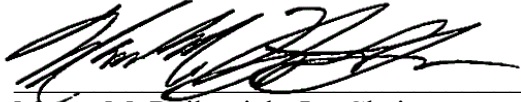
Second, we find Head’s misunderstanding of his legal obligations insufficient to establish good cause. Head asserts that as a *pro-se* Respondent lacking legal sophistication, his mistaken belief that the litigation was being handled by the other respondents was excusable. Mot. at 2-3. Head may be overstating his lack of legal sophistication. While Head may have little experience with litigation in the *courts*, as the part-owner and project foreman of a mine who has been involved in multiple other mining projects, he likely has at least some familiarity with Mine Act proceedings. Dep. Tr. at 19, 40. Regardless, as the Secretary notes, “lack of legal sophistication is not, by itself, an extraordinary circumstance” justifying equitable relief. *Raspberry v. Garcia*, 448 F.3d 1150, 1154 (9th Cir. 2006); *cf. Active Res. Inc.*, 46 FMSHRC 848 (Oct. 2024) (ignorance of the law is not sufficient grounds for relief under Rule 60(b)(1)).

Finally, we do not find the Judge’s Default Decision void. Under Rule 60(b)(4) of the Rules of Civil Procedure, relief may be appropriate where the judgment is void. However, to be void, a judgment must be more than merely erroneous—the Judge must have lacked jurisdiction or acted inconsistently with due process. *E.g., United States v. Berke*, 170 F.3d 882, 883 (9th Cir. 1999). Here, both issues raised by Head—both the propriety of compensatory damages in Mine Act discrimination proceedings and the right to a civil jury trial in the assessment of civil penalties—are currently open questions of law.³ Accordingly, there is no basis to conclude that the Judge’s decision was void on these grounds.

² The record also strongly suggests that Head had constructive notice of the Show Cause Order. The Order was served on all four Respondents, and Head has strong business ties to RMC, AMP and Myers.

³ To date, the issue of compensatory damages has only been addressed in non-binding decisions by the Commission’s Administrative Law Judges, and neither the Commission nor any circuit court has concluded that operators are entitled to jury trials in Mine Act proceedings.

Accordingly, we deny Head's motion.



Marco M. Rajkovich, Jr., Chair



Mary Lu Jordan, Commissioner



Timothy J. Baker, Commissioner

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