

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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April 3, 2026

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

v.

MATERIAL SAND & STONE
CORPORATION

Docket No. YORK 2025-0020
A.C. No. 37-00068-604329

BEFORE: Rajkovich, Chair; Jordan, Baker, and Marvit, 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 July 31, 2025, the Commission received from Material Sand & Stone Corporation (“MSSC”) a motion seeking to reopen a penalty assessment proceeding and relieve it from the Default Order entered against it.

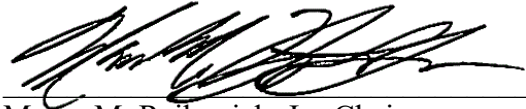
On January 22, 2025, the Chief Administrative Law Judge issued an Order to Show Cause in response to MSSC’s perceived failure to answer the Secretary of Labor’s November 19, 2024, Petition for Assessment of Civil Penalty. By its terms, the Order to Show Cause was deemed a Default Order on February 24, 2025, when it appeared that the operator had not filed an answer within 30 days.

MSSC asserts that it never received the Order to Show Cause, which was allegedly served on the operator solely via email. It also asserts that it timely responded to the Secretary’s Penalty Petition on December 19, 2024, when it sent an answer to the Conference Litigation Representative (“CLR”) representing the Secretary in this matter. The operator subsequently contacted the relevant CLR after receiving a delinquency notice for unpaid penalties on May 15, contacted the Mine Safety and Health Administration’s Office of Assessments and local District Office after receiving a collections letter from the Department of the Treasury dated July 15, and was ultimately directed to the Commission’s procedures for filing a motion to reopen.

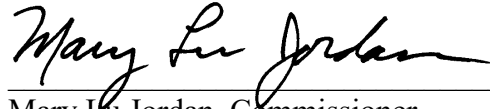
The Secretary opposes MSSC’s motion to reopen this proceeding. She asserts that the operator’s misunderstanding of its obligation to file an answer with the Commission (rather than with the Secretary of Labor) is not a proper justification for relief. She further notes that the operator has a recent history of defaults.

A Judge's jurisdiction terminates when a default occurs. 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).

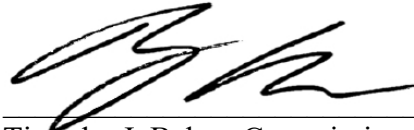
A review of Commission records indicates that the Order to Show Cause was not properly served on the operator and therefore did not result in a final order of default. Accordingly, the operator's motion is denied as moot. *See, e.g., Iron Mountain Quarry, LLC*, 42 FMSHRC 901, 902 (Nov. 2020). This case remains open, and 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 2700.¹



Marco M. Rajkovich, Jr., Chair



Mary Lu Jordan, Commissioner



Timothy J. Baker, Commissioner


¹ MSCC's submissions suggest it may not understand that the Commission is a separate entity from the Department of Labor. Filings in Commission proceedings (including answers to the Secretary's Penalty Petition) must be submitted *to the Commission*. 29 C.F.R. §§ 2700.5, 2700.29.

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 operator was not served the Order to Show Cause and Order of Default. As such, there is no final order to reopen. Though I believe the Commission lacks the authority to consider motions to reopen, I concur with the Majority as the Commission is not reopening the matter.



Moshe Z. Marvit, Commissioner

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