



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

TH CONSTRUCTION GROUP,

Respondent.

OSHRC Docket No. 22-0739

REMAND ORDER

Before: ATTWOOD, Chairman and LAIHOW, Commissioner.

BY THE COMMISSION:

On December 12, 2022, Chief Administrative Law Judge Covette Rooney issued an order denying Respondent relief from a final order under Federal Rule of Civil Procedure 60(b) and finding Respondent in default for demonstrating contumacious conduct and a pattern of disregard for the Commission’s proceedings.¹ For the following reasons, we set aside the judge’s order and remand this case for further proceedings consistent with this opinion.

BACKGROUND

On July 26, 2021, the Occupational Safety and Health Administration issued Respondent a four-item serious citation with a total proposed penalty of \$15,214. On June 7, 2022, Respondent’s owner, Thomas Hazard, appearing pro se, filed a handwritten letter with the

¹ Rule 60(b)(1) provides in relevant part: “On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; . . . [.]” *See* 29 U.S.C. §661(g) (“Unless the Commission has adopted a different rule, its proceedings shall be in accordance with the Federal Rules of Civil Procedure.”); Commission Rule 2(b); 29 C.F.R. § 2200.2(b) (applicability of Federal Rules of Civil Procedure to Commission proceedings).

Commission, stating that he was “requesting a late notice of contest.”² In the letter, Hazard claims that the employees engaged in the alleged violative conduct at the cited worksite were employed by another contractor and that after receiving OSHA’s citation, he “immediately contacted the inspector” and sent an email with information about the other contractor. According to Hazard, he was told “not to worry” and to wait for OSHA’s call if more information was needed. He further claims that “they stated this happens all the time” and he “was never told that I still needed to contest the charges.”

After the case was docketed, the Secretary filed a motion for an extension of time to plead or otherwise move and to “allow OSHA sufficient time to attempt to settle this case.” The judge granted the motion on July 28, 2022, stating that pleadings shall be filed on or before September 26, 2022. The Secretary filed a complaint on September 22, 2022, asserting that “jurisdiction was established by section 10(c)” of the Occupational Safety and Health Act.³ On October 25, 2022, the judge issued Respondent an order to show cause for its failure to file an answer, which was due on October 13, 2022. The order gave Respondent until November 8, 2022, to respond and included a return receipt card with a different employer’s name and address.

Having received no response from Respondent to the show cause order, the judge issued her decision on December 12, 2022. The judge, noting only that Respondent had filed its notice of contest almost a year late, concluded that there was “no avenue for relief” under Rule 60(b) because this case arises in the Second Circuit, which has held that the Commission lacks jurisdiction over citations “deemed a final order” under section 10(a) of the Act, 29 U.S.C. § 659(a). *Chao v. Russell P. Le Frois Builders, Inc.*, 291 F.3d 219, 229-30 (2d Cir. 2002) (“[W]e conclude that the Commission may not exercise jurisdiction [over a late-filed notice of contest] based on Rule 60(b)(1).”). While acknowledging that the show cause order’s return receipt card had the wrong address, the judge found that even if Rule 60(b) relief was available, she would “nonetheless dismiss the Late Notice of Contest” as a sanction given Respondent’s failure to return the postcard included with the notice of docketing to the Commission, respond to the Secretary’s

² An employer has fifteen working days from receipt of the citation to notify the Secretary of its intent to contest. 29 U.S.C. § 659(a). A failure to do so results in the citation being “deemed a final order of the Commission” *Id.*

³ Jurisdiction is vested in the Commission once the Secretary receives a timely notice of contest and notifies the Commission accordingly. 29 U.S.C. § 659(c); *see also* Commission Rule 33, 29 C.F.R. § 2200.33 (notification requirements governing notices of contest).

request for consent on the motion for an extension of time, file an answer, and respond to the order to show cause.

In its petition for discretionary review, Respondent, now represented by counsel, repeats the assertions made by Hazard in his letter to the Commission and makes several other claims. According to emails attached to the petition, OSHA and Respondent's counsel engaged in settlement discussions from August through October 2022. Also attached to the petition are the documents Hazard claims he previously shared with OSHA, as well as the order to show cause Respondent received, which is captioned with another employer's name ("L&B Framing, LLC") and an incorrect docket number ("22-1043"). Respondent's counsel claims that he was unable to register with the Commission's e-filing system and that Respondent received neither the Commission's notice of docketing nor the Secretary's complaint. Finally, Respondent alleges that it is entitled to relief under Federal Rule of Civil Procedure 60(b), including under paragraph (b)(3) which the judge did not address,⁴ based on the misrepresentations it claims OSHA made to Hazard that he did not need to worry about the citation and OSHA's failure to return Hazard's phone calls until the Assistant Area Director became involved.

DISCUSSION

The Commission has long held that it has the authority under section 10(a) of the Act, 29 U.S.C. § 659(a), to grant Rule 60(b) relief from a final order. *See Randall Mech., Inc.*, 2020 WL 4514843 at *1 (No. 17-1595, 2020); *Northwest Conduit Corp.*, 18 BNA OSHC 1948, 1949 (No. 97-851, 1999); *Jackson Assocs. of Nassau*, 16 BNA OSHC 1261, 1263 (No. 91-0438, 1993). But as the judge noted, the Second Circuit has held that the Commission lacks jurisdiction to grant such relief, and the Commission generally applies the law of the circuit where it is probable a case will be appealed. *See Kerns Bros. Tree Serv.*, 18 BNA OSHC 2064, 2067 (No. 96-1719, 2000); *Le Frois Builders*, 291 F.3d at 229-30; *see also HRH Constr. Corp.*, 19 BNA OSHC 2042, 2044 (No. 99-1614, 2002) (view of then Commissioner Rogers that where it is highly probable any decision to grant relief under Rule 60(b)(1) would be appealed by the Secretary to the Second

⁴ Rule 60(b)(3) provides in relevant part: "On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; . . . [.]"

Circuit, she would apply *LeFrois* and affirm without considering the merits of the parties' arguments).

Contrary to the judge's decision, however, the Second Circuit is not the only relevant circuit here. Respondent (but not the Secretary) could appeal this matter to the D.C. Circuit, which has not addressed whether the Commission has authority to grant Rule 60(b) relief. *See* 29 U.S.C. § 660(a) ("Any person adversely affected or aggrieved by an order of the Commission . . . may obtain . . . review . . . in any United States court of appeals for the circuit in which the violation is alleged to have occurred or where the employer has its principal office, or in the Court of Appeals for the District of Columbia Circuit."); 29 U.S.C. § 660(b) ("The Secretary may also obtain review or enforcement of any final order of the Commission by filing a petition for such relief in the United States court of appeals for the circuit in which the alleged violation occurred or in which the employer has its principal office."); *Burlington Capital PM Grp., Inc. d/b/a Post Woods Apartment Homes*, No. 20-0528, at 3 n.3 (OSHRC 2020) (noting D.C. Circuit has not specifically affirmed the Commission's authority to grant Rule 60(b) relief but has relied on Commission precedent in "assum[ing] Rule 60(b)(1)'s applicability to . . . proceedings [when] neither party contest[ed] it" and affirming the Commission's denial of Rule 60(b) relief (citing *David E. Harvey Builders, Inc. v. Sec'y of Labor*, 724 F. App'x 7, 8 (D.C. Cir. 2018) (unpublished)).⁵

Under these circumstances, the Commission's own precedent should be applied. *Burlington Capital*, No. 20-0528, at 3 n.3 (OSHRC 2020) (applying Commission precedent addressing claims for Rule 60(b) relief where one relevant circuit has affirmed Commission's authority to grant such relief but two other relevant circuits have not specifically ruled on the issue); *Sci. Applications Int'l Corp., d/b/a/ SAIC*, 2020 WL 1941193, at *10 (No. 14-1668, 2020) (applying Commission precedent where one relevant circuit conflicts with Commission precedent and the other has not directly addressed the issue); *Bethlehem Steel Corp.*, 9 BNA OSHC 1346, 1349 n.12 (No. 76-3444, 1981) (consolidated) (applying Commission precedent where relevant circuits were in direct conflict and explaining that "the Commission, as an agency with national

⁵ The D.C. Circuit has permitted Rule 60(b) relief in other administrative proceedings, including those before the Federal Mine Safety and Health Review Commission. *See, e.g., Lone Mountain Processing, Inc. v. Sec'y of Labor*, 709 F.3d 1161, 1163 (D.C. Cir. 2013) (acknowledging Federal Mine Safety and Health Review Commission's longstanding use of Rule 60(b) to reopen otherwise final orders).

jurisdiction, may find it difficult to apply the law of a single circuit where venue for an appeal would lie in several circuits”). Accordingly, we find that the judge erred by failing to consider whether, under Commission precedent, Respondent has established that it was entitled to Rule 60(b) relief.

We also set aside the judge’s ruling that Respondent exhibited contumacious conduct and a pattern of disregard for the Commission’s proceedings. In making this finding, the judge was apparently unaware of the parties’ settlement efforts or Respondent’s retention of counsel to address the citation. Nonetheless, the judge relied on Respondent’s failure to respond to the show cause order, which by her own admission included a return receipt card that is addressed to an entirely different employer. Likewise, the caption on the order signed by the judge names a different employer and includes the incorrect docket number.⁶ In these circumstances, we find the show cause order failed to provide Respondent with sufficient notice of the need to respond. And given the judge’s acknowledgment of the erroneous return receipt card, issuance of a corrected order would have been appropriate.⁷ In any event, the judge need not revisit this erroneous ruling given the current posture of the case.

On remand, the judge is directed to provide Respondent with an opportunity to present evidence regarding its claims that it attempted in good faith to participate in the Commission’s proceedings, including Hazard’s alleged communications with OSHA following receipt of the citation. Specifically, the judge should determine as an initial matter, whether Respondent, in fact, failed to file a timely notice of contest given Hazard’s assertions that he emailed OSHA “immediately” following receipt of the citation and was unaware that he “still needed to contest” it.⁸ *See, e.g., Bill Jones Repairs & Reroofs, Inc.*, 23 BNA OSHC 1594, 1595 (No. 11-1284, 2011) (construing employer’s letter sent to OSHA requesting an informal conference as a notice of

⁶ The judge appears to have also signed a correctly captioned show cause order, but in light of the incorrectly captioned order attached to Respondent’s petition, it was apparently not sent to Respondent.

⁷ We note that the judge’s reliance on Respondent’s failure to file an answer also appears misplaced given that Respondent would only be required to file an answer if the judge had first determined that it was entitled to relief from a final order under Rule 60(b).

⁸ It is not clear from the record whether the Secretary is even alleging that Respondent failed to file a timely notice of contest. While the complaint notes the notice of contest was not filed until June 7, 2022, it also asserts that “[j]urisdiction of this action is conferred . . . by section 10(c) of the Act.”

contest); *Herasco Contractors, Inc.*, 16 BNA OSHC 1401, 1402 (No. 93-1412, 1993) (“liberally” construing an “abatement letter” as a notice of contest). *But cf. Prime Roofing Corp.*, 22 BNA OSHC 1892, 1897 (No. 07-1409, 2009) (finding employer’s letter to OSHA was not a notice of contest because it simply contained another contractor’s contact information and did not convey a defense to the citation). If the notice of contest was in fact untimely, the judge is directed to then evaluate under Commission precedent whether Respondent has proven that it is entitled to relief under Rule 60(b)(1) or 60(b)(3).

For all these reasons, we set aside the judge’s order and remand this case for further proceedings consistent with this opinion.

SO ORDERED.

/s/
Cynthia L. Attwood
Chairman

/s/
Amanda Wood Laihow
Commissioner

Dated: January 24, 2023



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

TH CONSTRUCTION GROUP,

Respondent.

OSHRC DOCKET NO. 22-0739

ORDER OF DISMISSAL FOR LATE NOTICE OF CONTEST

AND FAILURE TO FILE AN ANSWER

Procedural History

On July 26, 2021, following an inspection on April 14, 2021, of a worksite in Dobbs Ferry, New York, the United States Occupational Safety and Health Administration (“OSHA”) issued a Citation and Notification of Penalty (“Citation”) to TH Construction Group (“Respondent”) for alleged violations of the Occupational Safety and Health Act, 29 U.S.C. §§ 6b151, et seq (“OSH Act”). The Citation, which resulted from OSHA inspection number 1542437, alleged four serious violations of OSHA’s construction safety standards.¹ The Citation proposed a total penalty of \$15,214.

The Citation was mailed to Respondent at 42 Windsor Highway, New Windsor, New York,

¹ More specifically: Item 1 of the Citation alleged a serious violation of 29 C.F.R. § 1926.100(a), for failure to protect employees with hard hats or protective helmets; Item 2 alleged a serious violation of 29 C.F.R. § 1926.102(a)(1), for failure to use proper eye protection; Item 3 alleged a serious violation of 29 C.F.R. § 1926.501(b)(13), for failure to implement a fall protection system for workers working above six feet; and Item 4 alleged a serious violation of 29 C.F.R. § 1926.1053(b)(6), for failure to keep a ladder on a stable and level surface.

12553. On June 7, 2022, Mr. Thomas Hazard, whose relationship to Respondent is not clear from the current record, filed a Late Notice of Contest with OSHA challenging the Citation on behalf of Respondent. In the Late Notice of Contest, Respondent's representative acknowledges receipt of the Citation on July 30, 2021. He further alleges that there was a "miscommunication" regarding the issuance of the Citation, that the workers involved were not Respondent's employees, and that he wishes to "furnish the proof of who did the work and remove these charges."

On June 24, 2022, after having received the Late Notice of Contest, the Commission mailed a Notice of Docketing and Instructions to Employer ("Notice of Docketing") to Respondent's address in New Windsor, New York. The Notice of Docketing included a guide to the Commission's procedures and a postcard that was to be returned to the Commission to verify Respondent had complied with the employee posting requirements of Commission Rule 7 for the Citation and Notice of Contest. *See* 29 C.F.R. § 2200.7. To date, Respondent has not returned this postcard to the Commission.

On July 12, 2022, the Secretary filed a Motion for an Extension of Time to Plead or Otherwise Move. In this motion, the Secretary's representative noted that "[t]his is an apparent late contest" and asked for 60 additional days to file his Complaint in an attempt to resolve the matter. The motion further indicated that "[t]he Secretary contacted the respondent's representative about this motion, but the respondent's representative has not responded as of the filing of this motion." The undersigned granted the Secretary's motion on July 28, 2022.

Thereafter, on September 22, 2022, the Secretary filed his Complaint. The Certificate of Service for the Complaint indicates it was filed in the Commission's e-filing system and was served

on Mr. Hazard by email at the following email address: [redacted].² Respondent was required to respond to the Complaint within 21 days of service. 29 C.F.R. § 2200.34(b)(1). To date, Respondent has not filed an Answer or otherwise responded to the Complaint.

On October 25, 2022, the undersigned issued an Order to Show Cause Why Notice of Contest Should Not Be Dismissed (“Show Cause Order”) for failure to file an Answer. The Show Cause Order directed Respondent to show cause, on or before November 8, 2022, as to why it should not be declared in default for not filing an Answer to the Complaint. The Show Cause Order explained that if there was no response, all the alleged violations set out in the Citations would be affirmed and the proposed penalties would be assessed without a hearing.

Two copies of the Show Cause Order were mailed to Respondent’s address in New Windsor, New York, one by First-Class Mail and one by Certified Mail with return receipt requested. The return receipt for the copy of the Show Cause Order served via Certified Mail was returned to the Commission’s office on November 7, 2022. The return receipt indicates that it was delivered on October 28, 2022. The signature block contains a signature, but it is illegible. Although the address block on the return receipt contains an incorrect address,³ the tracking information for this copy of the Show Cause Order (7022 0410 0002 1869 8383) confirms that this copy was, in fact, delivered to an address in New Windsor, New York on October 28, 2022.⁴ The copy of the Show Cause Order sent by First-Class Mail was not returned to the Commission’s office. An additional copy of

² Although the Commission’s e-filing system does not contain an email address for Mr. Hazard, the undersigned notes that this is the same email address Mr. Hazard provided in his Late Notice of Contest.

³ The address block reads:

Cynthia H. Carrillo
L&B FRAMING LLC
3417 Bowden Circle West
Jacksonville, FL 33216

⁴ A copy of the tracking information for the Show Cause Order sent by Certified Mail is attached to this order as Exhibit A.

the Show Cause Order was sent to Mr. Hazard at the email address provided in the Late Notice of Contest. This email was not returned as undeliverable to the undersigned's staff member who sent it.

To date, Respondent has not filed a response to the Show Cause Order nor has it filed an Answer to the Secretary's Complaint.

Analysis

Relief Under Federal Rule of Civil Procedure 60(b)

The OSH Act provides that when OSHA has issued a citation to an employer, "the employer has fifteen working days within which to notify the Secretary that he wishes to contest the citation or proposed assessment of penalty." 29 U.S.C. § 659(a). Here, the Citation was issued on July 26, 2021, and Respondent did not file its Late Notice of Contest until nearly a year later on June 6, 2022, well past the 15 days provided for by the OSH Act.⁵ On this point, the OSH Act further provides that "[i]f, within fifteen working days from the receipt of the notice issued by the Secretary the employer fails to notify the Secretary that he intends to contest the citation or proposed assessment of penalty ... the citation and the assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency." *Id.* Thus, by operation of law, the Citation has already been "deemed a final order of the Commission"

Even still, the Commission has long held that "in cases where an employer files a late notice of contest, the employer may be granted relief from the final order under the terms of [Federal Rule

⁵ The undersigned notes that Respondent's representative has recognized in the Late Notice of Contest itself that, even though he received the Citation in July of 2021, he failed to file the Late Notice of Contest until June of 2022. The Secretary also acknowledged that the Late Notice of Contest was late in his Motion for an Extension of Time to Plead or Otherwise Move.

of Civil Procedure (“FRCP”)] 60(b).”⁶ *Randall Mechanical, Inc.*, 2020 WL 4514843, at *1 (O.S.H.R.C. July 30, 2020), quoting *Branciforte Builders, Inc.*, 9 BNA OSHC 2113, 2117 (No. 80-1920, 1981). However, Respondent has no such avenue of relief in this case. The Second Circuit, where this case arose and where Respondent’s business address is located,⁷ has determined that the Commission lacks jurisdiction over Citations that have been “deemed a final order” under 29 U.S.C. § 659(a). *See Chao v. Russell P. Le Frois Builders, Inc.*, 291 F.3d 219, 229-30 (2d Cir. 2002) (“[W]e conclude that the Commission may not exercise jurisdiction [over a late-filed notice of contest] based on Rule 60(b)(1).”). The Commission has held that “[w]here it is highly probable that a case will be appealed to a particular circuit, the Commission generally has applied the precedent of that circuit in deciding the case — even though it may differ from the Commission’s precedent.” *Kerns Bros. Tree Serv.*, 18 BNA OSHC 2064, 2067 (No. 96-1719, 2000). Thus, due to the Second Circuit’s holding in *Russell P. Le Frois*, Respondent is not entitled to any relief under FRCP 60(b). *See Randall Mechanical, Inc.*, 2020 WL 4514843, at *1 n.4 (noting the Second Circuit’s holding that precludes relief from late-filed notices of contest under FRCP 60(b)(1)). The Citation has been “deemed a final order of the Commission” 29 U.S.C § 659(a).

Sanctions for Failure to File an Answer

Even if the Commission had jurisdiction over this proceeding, the undersigned would nonetheless dismiss the Late Notice of Contest for Respondent’s failure to an Answer or a response

⁶ FRCP 60(b), entitled “Grounds for Relief from a Final Judgement, Order, or Proceeding,” provides six grounds for relief from a final judgment or order, including “mistake, inadvertence, or excusable neglect.” Fed. R. Civ. P. 60(b)(1); *see also, e.g., A.W. Ross, Inc.*, 19 BNA OSHC 1147 (No. 99-0945, 2000) (applying FRCP 60(b)(1) to a late-filed notice of contest).

⁷ The employer or the Secretary may appeal a Commission order to the federal court of appeals for the circuit in which the violation allegedly occurred or where the employer has its principal office, and the employer also may appeal to the District of Columbia Circuit. *See* 29 U.S.C. §§ 660(a) & (b). Here, the alleged violation occurred in New York, in the Second Circuit, where Respondent’s business address is also located. *See* 29 U.S.C. § 660(b).

to the Show Cause Order. In this regard, a Commission judge has very broad discretion in imposing sanctions for noncompliance with the judge's orders or the Commission's Rules of Procedure. *See Sealtite Corp.*, 15 BNA OSHC 1130, 1134 (No. 88-1431, 1991). However, the Commission has held that dismissal is too harsh a sanction for failure to comply with certain prehearing orders unless the record shows contumacious conduct by the noncomplying party, prejudice to the opposing party, or a pattern of disregard for Commission proceedings. *See Architectural Glass & Metal Co.*, 19 BNA OSHC 1546, 1547 (No. 00-0389, 2001).

The undersigned finds the conduct of Respondent to be contumacious and demonstrative of a pattern of disregard for these proceedings. To start, Respondent never returned the postcard that was included with the Notice of Docketing, sent to Respondent on June 24, 2022. The Secretary's Motion for an Extension of Time to Plead or Otherwise Move further indicates that Respondent's representative failed to respond when contacted about the filing of the motion. As to the Show Cause Order, Respondent received three copies of this order: one by First-Class Mail,⁸ one by Certified Mail,⁹ and one by email.¹⁰ Over three weeks have passed since the deadline in the Show

⁸ The copy of the Show Cause Order sent by First-Class Mail was never returned to the Commission's office and, absent evidence to the contrary, is therefore presumed to have been delivered by the Postal Service. *See Minor v. Clinton Cnty., N.Y.*, 541 F.3d 464, 472-73 (2d Cir. 2008); *Lavelle Constr.*, 19 BNA OSHC 1149, 1151 n.4 (No. 99-1921, 2000) (view of Chairman Rogers).

⁹ As noted above, the return receipt indicates that this copy of the Show Cause Order was delivered on October 28, 2022. The tracking information for this copy of the Show Cause Order (7022 0410 0002 1869 8383) corroborates delivery of this copy in New Windsor, New York on the same date. *See Ex. A.*

¹⁰ The copy of the Show Cause Order sent by email to the address provided by Respondent's representative in the Late Notice of Contest was not returned as undeliverable to the undersigned's staff member who sent it. Delivery of this email is therefore presumed. *See, e.g., TV Ears, Inc. v. Joyshiya Dev. Ltd.*, No. 3:20-CV-01708-WQH-BGS, 2021 WL 165013, at *3-4 (S.D. Cal. Jan. 19, 2021) (finding notice was sufficient where pleadings were sent to email addresses and were not "bounced back" or returned as undeliverable); *Viahart, LLC v. Does 1-73*, No. 6:18-CV-604-RWS-KNM, 2020 WL 10692890, at *4 (E.D. Tex. June 17, 2020) ("Federal Courts have presumed delivery of an email if it is not returned undeliverable and the email address is used by the Defendant in conducting business." (citing cases)); *see also Shu Chung Lee v. Dir., Div. of Tax'n*, No. 007387-2017, 2017 WL 2544295, at *2 (N.J. Tax Ct. June 8, 2017) (State tax agency was "under no obligation to ensure plaintiff read his emails, or to re-send an application especially when there is no notice or indication that its initial emails were undeliverable."); *Alexander v. State*, No. 04-15-00545-CR, 2016 WL 805494, at *1 (Tex. App. Mar. 2, 2016) (dismissing appeal where the appellant failed to appear for an ordered hearing and failed to respond to the court's email which "was not returned as undeliverable").

Cause Order, and yet Respondent has not filed a response, has provided no excuse for its failure to do so, and has still not filed an Answer to the Secretary's Complaint, which was filed over two months ago.

Based on the foregoing considerations, in the event jurisdiction is not foreclosed by the law of the Second Circuit, the undersigned still finds dismissal of Respondent's Notice of Contest is warranted. *See Ark. Abatement Servs., Inc.*, 17 BNA OSHC 1163, 1164-65 (No. 94-2210, 1995) (“[W]here a party's default indicates disrespect for, or indifference to, Commission proceedings, the party's claims properly are dismissed.”); *Sealtite Corp.*, 15 BNA 1130, 1134 (88-1431, 1991) (contumacious conduct established where party engaged in a “consistent pattern” of failure to respond to judge's orders).

ORDER

Based on the foregoing:

1. Respondent's Late Notice of Contest, construed as motion for relief under FRCP 60(b), is DENIED.

2. In the alternative, if jurisdiction is found, Respondent is found to be in DEFAULT, its Notice of Contest is DISMISSED, and the Citation issued to Respondent on July 26, 2021, as a result of OSHA inspection number 1542437 is AFFIRMED in its entirety and \$15,214 in penalties are ASSESSED.

SO ORDERED.

/s/ _____
Covette Rooney
Chief Judge, OSHRC

Dated: December 1, 2022
Washington, D.C.

Exhibit A



[FAQs >](#)

Tracking Number:

[Remove X](#)

70220410000218698383

[Copy](#) [Add to Informed Delivery](#)
(<https://informedelivery.usps.com/>)

Latest Update

Your item was delivered to an individual at the address at 3:29 pm on October 28, 2022 in NEW WINDSOR, NY 12553.

Feedback

Get More Out of USPS Tracking:

USPS Tracking Plus®

Delivered

Delivered, Left with Individual

NEW WINDSOR, NY 12553
October 28, 2022, 3:29 pm



Out for Delivery

NEW WINDSOR, NY 12553
October 28, 2022, 10:16 am



Arrived at Post Office

NEW WINDSOR, NY 12553
October 28, 2022, 10:05 am



Departed USPS Regional Facility

ALBANY NY DISTRIBUTION CENTER
October 27, 2022, 9:03 pm



Arrived at USPS Regional Facility

ALBANY NY DISTRIBUTION CENTER

- October 27, 2022, 1:38 pm
- **In Transit to Next Facility**
October 26, 2022
- **Departed USPS Regional Facility**
GATHERSBURG MD DISTRIBUTION CENTER
October 25, 2022, 10:33 pm
- **Arrived at USPS Regional Facility**
GATHERSBURG MD DISTRIBUTION CENTER
October 25, 2022, 9:47 pm
- **Hide Tracking History**

Text & Email Updates



USPS Tracking Plus®



Product Information



Feedback

See Less ^

Track Another Package

Need More Help?

Contact USPS Tracking support for further assistance.

FAQs

CERTIFICATE OF SERVICE

This is to certify that a copy of the Order was mailed to the parties listed below by first class mail on **[date]**.

SOL ADDRESS

RESPONDENT

/s/ _____
, Legal Asst.

Post Office Address:
Judge
One Lafayette Centre
1120 20th Street, N.W., Room 990
Washington, D.C. 20036-3457
(202) 606-5405 FAX (202) 606-5409