



Some personal identifiers have been redacted for privacy purposes.

United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3419

SECRETARY OF LABOR,

Complainant,

v.

DAVID HERNANDEZ,
d/b/a David Hernandez,

Respondent.

Docket No. 26-0233

ORDER OF DEFAULT AND DISMISSAL¹

Pursuant to Commission Rule 101(a), 29 C.F.R. § 2200.101(a), the Respondent, David Hernandez, is declared to be in default, and his notice of contest is dismissed. For the reasons described below, the citation issued to him on September 24, 2025, as a result of OSHA inspection number 1851706 is **AFFIRMED** in its entirety and its proposed penalties are **ASSESSED** as issued.

Background

On or about September 12, 2025, the Madison, Wisconsin, area office of the Occupational Safety and Health Administration (OSHA) initiated OSHA inspection number 1851706 at a construction worksite at 7116 County Road K, Waunakee, Wisconsin 53597. As a result of that inspection, OSHA issued to Mr. Hernandez on September 24, 2025, a three-item citation that alleged violations of certain OSHA construction industry safety and health standards (codified at 29 C.F.R. Part 1926) and that proposed penalties for those alleged violations totaling \$24,685.00. The citations further directed Mr. Hernandez to abate the alleged violative conditions by October 2, 2025.

The area director of the Madison OSHA area office sent Mr. Hernandez a letter dated January

¹ This order is being issued in both English and Spanish. The English version is the authoritative and controlling version. See Executive Order 14224, 90 Fed. Reg. 11363 (March 6, 2025).

26, 2026, addressed to [redacted], Janesville, WI 53548. (This is the same address to which the area office had sent the citation to Mr. Hernandez.) It is not clear from the case file precisely what prompted this letter from the area director. The letter stated in part that the area director did not have the authority to extend the time for Mr. Hernandez to contest the citation and informed Mr. Hernandez that he could request an extension of the time to contest the citation by filing a “late notice of contest” with the Occupational Safety and Health Review Commission (Commission).

Mr. Hernandez apparently acted on that letter from the area director by sending a typewritten letter in English that was misdated “1/29/25” (but which the U.S. Postal Service accurately postmarked “02/03/26”) in a mailing addressed to the Commission’s Executive Secretary. The return address on that mailing was [redacted], Janesville, WI 53548 (again, the same address to which the OSHA area office had sent the citation). The letter referenced OSHA inspection 1851706 that had been conducted on September 12, 2025. Even though Mr. Hernandez sent this letter to the Commission, the letter’s salutation was “To the Area Director.” The body of the letter states the following:

I am writing to formally lodge a complaint regarding the processing of funds owed to me in relation to the above-referenced case. According to the terms of the case, I am due a payment of \$24,685. However, my efforts to secure these funds or receive a status update have been met with significant obstacles.

Specifically, I am documenting the following:

Attempted Physical Visit: On October 7th of 2025, I traveled to the OSHA office at 3:51 pm to discuss this matter in person, only to find the office closed due to the federal government shutdown.

Attempted Phone Contact: I made multiple attempts to reach your office by phone on the same day I visited at 4:00 pm, but received no response or an automated message stating that staff were furloughed.

Financial Impact: As this case involves a substantial sum of money, the lack of communication and the delay in payment are causing me undue financial hardship.

While I understand that the shutdown was beyond the control of local staff, the lack of a contingency plan for individuals with active financial settlements is unacceptable. Now that the government has resumed

operations, I expect this matter to be prioritized.

Please provide a written response within [5-10] business days confirming the status of my payment and the expected disbursement date. If the delay is due to a backlog caused by the shutdown, I request an expedited review given my documented attempts to resolve this during the lapse.

Thank you for your prompt attention to this urgent matter.

Sincerely,

David Hernandez

(The case file contains no information to explain Mr. Hernandez's apparent belief that he is owed the sum of \$24,685.00 rather than being obliged to pay that sum in penalties.)

The Commission's Executive Secretary treated Mr. Hernandez's letter as a notice of contest and docketed the matter on February 11, 2026.

On March 24, 2026, the Secretary filed a motion in both English and Spanish to extend the time to file the complaint or appropriate motion. That motion was granted on March 26, 2026, by an order issued in both English and Spanish.

On March 27, 2026, the Commission's Chief Judge assigned the matter to the undersigned Commission Judge for adjudication.

On April 23, 2026, the Secretary filed a complaint in both English and Spanish and served the same by first class mail to Mr. Hernandez at the address in Janesville that Mr. Hernandez had provided as described above. Paragraph I of the complaint avers that the Commission has jurisdiction under section 10(c) of the Occupational Safety and Health Act of 1970 (Act), which is codified at 29 U.S.C. §§ 651, et seq. This averment indicates that the Secretary had apparently determined not to challenge the timeliness of Mr. Hernandez's contest of the citation in view of the 43-day government shutdown that occurred between the service of the citation on Mr. Hernandez and his apparent request to contest the citation.

Mr. Hernandez did not file a responsive pleading to the complaint, and so on May 20, 2026, the undersigned issued to him an order that he show cause "on or before June 22, 2026, why [he] should not

be declared to be in default and the citation(s) and penalties should not be affirmed due to [his] failure to file an answer to the complaint within the time permitted under the Commission Rules of Procedure.”

The order to show cause provided the following warning (upper case and boldface in original):

FAILURE TO RESPOND TO THIS ORDER WILL RESULT IN ALL VIOLATIONS BEING AFFIRMED AND ALL PROPOSED PENALTIES BEING ASSESSED AGAINST RESPONDENT WITHOUT A HEARING.

The order to show cause (both English and Spanish versions) was sent to Mr. Hernandez in two separate mailings to his address in Janesville—one by certified mail, return receipt requested, and the other by regular first-class mail. The order to show cause also reminded Mr. Hernandez that use of the Commission’s electronic filing system was mandatory (subject to a proper request by a self-represented employer to be exempted from that mandatory use).

The postal service returned the certified mailing to the undersigned’s office with a printed sticker on the face of the envelop dated 06/05/26 that stated: “RETURN TO SENDER[;] REFUSED[;] UNABLE TO FORWARD.” The regular first-class mailing was not returned undelivered and is thus presumed to have been delivered. *See Legille v. Dann*, 544 F.2d 1 (D.C. Cir. 1976) (noting that there is a rebuttable presumption that the postal service has delivered to the addressee a properly addressed, stamped, and deposited mailing).

Mr. Hernandez did not file a response to the order to show cause.

On July 6, 2026, the undersigned issued a notice in both English and Spanish versions of a telephone conference to be conducted on July 30, 2026, at 9:30 a.m. Central Time. The notice stated in part the following:

.... I have determined to provide the Respondent a final opportunity to participate in these proceedings by calling in for a telephone conference in which a Spanish language interpreter will participate for the Respondent if needed.

.... If the Respondent fails to call in or otherwise indicate any participation in these proceedings, I intend to issue an order of default and dismissal of

the Respondent's attempted contest.

The English and Spanish versions of the notice were sent to Mr. Hernandez by regular mail to the address in Janesville that he had provided.

Mr. Hernandez did not call in for the telephone conference on July 30, 2026.

Discussion

Commission Rule 101(a), codified at 29 C.F.R. § 2200.101(a), provides in part as follows:

Sanctions. When any party has failed to plead or otherwise proceed as provided by these rules or as required by the . . . Judge, the party may be declared to be in default . . . on the initiative of . . . the Judge, after having been afforded an opportunity to show cause why the party should not be declared to be in default Subsequently, . . . the Judge, in their discretion, may enter a decision against the defaulting party

The Commission “follows the policy in law that favors deciding cases on their merits.” *DHL Express, Inc.*, 21 BNA OSHC 2179, 2180 (No. 07-0478, 2007). Rule 101(a) nevertheless permits the harsh sanction of dismissal of a notice of contest where a respondent has displayed a “pattern of disregard” of Commission proceedings. *Philadelphia Constr. Equip., Inc.*, 16 BNA OSHC 1128, 1131 (No. 92-899, 1993); *Architectural Glass & Metal Co.*, 19 BNA OSHC 1546, 1547 (No. 00-0389, 2001); *see also* Commission Rule 101(b), 29 C.F.R. § 2200.101(b) (a default sanction may be set aside “[f]or reasons deemed sufficient by the Commission or the Judge and upon motion . . . expeditiously made”).

Mr. Hernandez's failures (1) to file a responsive pleading to the complaint, (2) to register with the Commission's electronic filing system (or request and obtain an exemption from mandatory e-filing), (3) to file a response to the order to show cause, (4) to call in for the July 30 telephone conference, and (5) the complete absence of contact with the Commission or the Secretary since the Commission docketed the matter on February 11, 2026, altogether reflect a pattern of disregard of Commission proceedings that warrants an order of default.

Both the order to show cause and the notice of telephone conference described above made it abundantly clear that if Mr. Hernandez continued to fail to participate in Commission proceedings, the

undersigned would issue an order of default that would have the effect of affirming the citation and proposed penalties in their entirety. Yet Mr. Hernandez chose neither to respond to the order to show cause or to call in for the telephone conference.

It is impossible to move this case forward to a hearing in view of Mr. Hernandez's failure to engage in the process and participate in the proceedings. There is no reasonable basis to conclude that Mr. Hernandez intends to begin engaging in the adjudicative process by participating in prehearing proceedings or appearing at a hearing to defend the matter. *Cf.* Commission Rule 64(a), 29 C.F.R. § 2200.64(a) (providing that "[t]he failure of a party to appear at a hearing may result in a decision against that party"). The only reasonable conclusions to be drawn from Mr. Hernandez's failures to engage in the process and to participate in these Commission proceedings are that (1) he has willfully abandoned his case before the Commission, or (2) he is disdainful of the orders of the Commission, or (3) both.

Mr. Hernandez's failure to engage in the process and participate in Commission proceedings is prejudicial to the administration of justice and to the Secretary's enforcement responsibilities under the OSH Act. The Commission cannot countenance the prejudicial effects of his continuing failures. Dismissal of Mr. Hernandez's notice of contest is the necessary and appropriate remedy to cure the prejudicial impact of his apparent abandonment of his contest of the citation.

ORDER

For these reasons, the Respondent, David Hernandez, is determined to be in DEFAULT, and his notice of contest is DISMISSED. The Citation and Notification of Penalty issued to Mr. Hernandez on September 24, 2025, in connection with OSHA inspection number 1851706 is AFFIRMED in its entirety, and the proposed penalties set forth therein totaling \$24,685.00 are ASSESSED.

SO ORDERED.

William S. Coleman
WILLIAM S. COLEMAN
Administrative Law Judge

DATED: August 28, 2026