



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.

VICTOR CONTRACTING L.L.C.,

Respondent.

OSHRC DOCKET NO. 26-0585

**DECISION AND ORDER OF DISMISSAL**

**Procedural History**

This matter is before the United States Occupational Safety and Health Review Commission (“Commission”) and this Court based on Respondent’s filing of a notice of contest on May 8, 2026.

Between July 14 and September 15, 2025, the United States Occupational Safety and Health Administration (“OSHA”) inspected a worksite in Barneveld, New York, under inspection number 1837150. As a result of that inspection, OSHA issued a Citation and Notification of Penalty (“Citation”) to Respondent, Victor Contracting, L.L.C., alleging violations of a safety standard promulgated under the Occupational Safety and Health Act, 29 U.S.C. §§ 651, *et seq.* (“OSH Act”). More particularly, the Citation alleged two instances of a willful violation of an OSHA construction safety standard related to fall protection.<sup>1</sup> The Citation proposed a total penalty of \$22,698.

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<sup>1</sup> The standard Respondent is alleged to have violated, 29 C.F.R. § 1926.501(b)(11), states: “Each employee on a steep roof with unprotected sides and edges 6 feet (1.8 m) or more above lower levels shall be protected from falling by guardrail systems with toeboards, safety net systems, or personal fall arrest systems.”

After Respondent filed its Late Notice of Contest,<sup>2</sup> this matter was originally assigned to a judge who has since left the Commission. In an order directed to Complainant, the Secretary of Labor (“Secretary”), the former judge concluded that the Secretary had an initial burden to “establish the grounds for dismissal of the [notice of contest]: namely the citation was issued and served upon the respondent, and that the Secretary did not receive any [notice of contest] from the respondent within 15 working days after the receipt of the citation.”<sup>3</sup> Ord. Directing Complainant to File Proof of Citation Issuance/Service/Receipt at 2-3, OSHRC Docket No. 26-0585 (May 28, 2026) (quoting *Taj Mahal Contracting/Gen. Constr. Co.*, No. 03-1088, 2004 WL 4965321, at \*2 (OSHRC, Oct. 25, 2004)). The former judge therefore ordered the Secretary to “file evidence that the Citation was sent to Respondent by certified mail (including the date thereof), and any evidence related to other attempts to serve Respondent (including dates), or evidence showing that Respondent did, in fact, receive the Citation (and the date of receipt).” *Id.* at 3.

The Secretary filed a brief response to the former judge’s order accompanied by two exhibits. On the issue of Respondent’s receipt of the Citation, the Secretary submitted the tracking information for the copy of the Citation sent to Respondent by USPS Certified Mail (tracking number 9489 0090 0027 6750 4588 69). *See* Ex. A to Sec’y Resp. This tracking information indicates that this copy of the Citation was delivered to an unspecified address in Utica, New York on September 20, 2025. *Id.* This tracking information is accompanied by a digital receipt, which contains an illegible signature but nonetheless indicates that a copy of the Citation was received at

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<sup>2</sup> Under the OSH Act, Respondent had 15 working days from the receipt of the Citation to file a notice of contest. *See* 29 U.S.C. § 659(a). Below, the Court concludes that Respondent’s notice of contest was in fact untimely. The Court therefore refers to Respondent’s filing as its “Late Notice of Contest.”

<sup>3</sup> Although a notice of contest commences a proceeding before the Commission, the OSH Act contemplates that the Secretary may initially receive an employer’s notice of contest and then “advise the Commission of such notification ....” 29 U.S.C. § 659(c).

Respondent's current address of record (11420 Steuben Road East, Utica, New York 13502) on September 20, 2025. *Id.*

On the issue of whether Respondent timely filed a notice of contest, the Secretary represented that "OSHA received neither a contest letter nor payment of the proposed penalty and therefore sent a demand letter to Respondent by regular mail (at the [Utica, New York] address) on March 13, 2026." Sec'y Resp. at 1-2. In support of this representation, the Secretary included a copy of the demand letter sent to Respondent. *See* Ex. B to Sec'y Resp.

Thereafter, the former judge issued another order, in which he found, based on the Secretary's response and accompanying documentation, that the Secretary "established that [he] complied with the statutory requirement of sending the citation by certified mail," "that Respondent, in fact, received the citation on September 20, 2025," and that "Respondent did not file a timely notice of contest." Ord. Directing Resp't to Establish Grounds for Rule 60(b) Relief at 3, OSHRC Docket No. 26-0585 (June 22, 2026). Accordingly, the judge found that the Citation was, by operation of law, a final order of the Commission and that Respondent must demonstrate that it is entitled to relief under Federal Rule of Civil Procedure 60(b) ("Rule 60(b)") to continue forward with its contest of the Citation.<sup>4</sup> *Id.* at 3-4. The judge gave Respondent until July 20, 2026,

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<sup>4</sup> Rule 60(b), entitled "Grounds for Relief from a Final Judgment, Order, or Proceeding," reads:

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;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b).

to file either a formal motion, a letter, or “similar document explaining why Respondent is entitled to relief [under Rule 60(b)(1)].” *Id.* at 4. The judge invited Respondent to “attach relevant documents, affidavits of individuals with first-hand knowledge of relevant information, or any other evidence that Respondent believes is relevant.” *Id.* at 4-5. The judge explicitly noted that **“Respondent’s failure to file a response to this Order by July 20, 2026, shall result in the Court dismissing Respondent’s untimely [notice of contest].”** *Id.* at 5 (emphases in original).

Before the passage of the former judge’s July 20th deadline, this matter was reassigned to the undersigned.<sup>5</sup> *See* Not. of Reassignment of Review Comm’n Judge, OSHRC Docket No. 26-0585 (July 15, 2026). To date, Respondent has not filed anything in response to the former judge’s order. Indeed, it has not filed anything in this matter since filing the Late Notice of Contest in May. Nonetheless, because Respondent is self-represented, its Late Notice of Contest “must be read liberally and should be interpreted to raise the strongest arguments that [it] suggest[s].” *Graham v. Henderson*, 89 F.3d 75, 79 (2d Cir. 1996). In its Late Notice of Contest, Respondent requested a “[r]eopening and formal review of this citation.” The Court finds this request sufficient to invoke Rule 60(b) relief. However, even with the Court liberally construing the Late Notice of Contest, Respondent has failed to demonstrate that it is entitled to relief under the Rule.

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<sup>5</sup> The Court recognizes that reassignment of this case grants it some discretion to revisit or modify the former judge’s findings. *See In re U.S.*, 733 F.2d 10, 13 (2d Cir. 1984) (“It is well established that the interlocutory orders and rulings made pre-trial by a district judge are subject to modification by the district judge at any time prior to final judgment, and may be modified to the same extent if the case is reassigned to another judge.”). The Court finds no reason to do so here, and any perceived conflict in the former judge’s findings and the undersigned’s own findings is unintentional.

## ANALYSIS

### Late Notice of Contest

The OSH Act provides that an employer issued a citation “has fifteen working days<sup>6</sup> within which to notify the Secretary that he wishes to contest the citation or proposed assessment of penalty.” 29 U.S.C. § 659(a). However, “[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.*

Here, as the former judge previously found, the Secretary has submitted sufficient proof that Respondent received the Citation at its address of record in Utica, New York, on September 20, 2025.<sup>7</sup> *See* Ex. A to Sec’y Resp. Accounting for the lapse in federal funding and resulting government shutdown that occurred from October 1, 2025, to November 12, 2025, Respondent had until November 21, 2025, to file a notice of contest.<sup>8</sup> However, it failed to do so until May 8, 2026, nearly six months past the fifteen-working-day deadline set forth in the OSH Act. *See* 29 U.S.C. § 659(a). Accordingly, by operation of 29 U.S.C. § 659(a), the Citation issued to Respondent has been “deemed a final order of the Commission and not subject to review by any court or agency.” *Id.*

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<sup>6</sup> Per 29 C.F.R. § 1903.22(c): “Working days means Mondays through Fridays but shall not include Saturdays, Sundays, or Federal holidays. In computing 15 working days, the day of receipt of any notice shall not be included, and the last day of the 15 working days shall be included.”

<sup>7</sup> The Court notes that, in its Late Notice of Contest, Respondent admits to “receiving the initial notice” from OSHA, although it does not clarify to what exactly this refers.

<sup>8</sup> Because Respondent’s Late Notice of Contest is months late under any calculation, the Court gives the most generous amount of time in calculating the end date for the filing period of a notice of contest, recognizing that it is not entirely clear whether Respondent should be credited with additional time to account for the government shutdown. *See, e.g., Brenyah v. Columbia Hosp. Corp. of Bay Area*, 181 F.4th 609, 619 (5th Cir. 2026) (finding that the government shutdown only stayed certain deadlines set by the EEOC but not initial claims of discrimination); *Beltran v. Chavez-*

### Rule 60(b) Relief

Even though Respondent's Late Notice of Contest is untimely, 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 Rule 60(b)."<sup>9</sup> *Randall Mechanical, Inc.*, No. 17-1595, 2020 WL 4514843, at \*1 (OSHRC, July 30, 2020) (quoting *Branciforte Builders, Inc.*, 9 BNA OSHC 2113, 2117 (No. 80-1920, 1981)). More particularly, Rule 60(b)(1) may relieve a party from a final order for reasons of "mistake, inadvertence, surprise, or excusable neglect ...."<sup>10</sup> FED. R. CIV. P. 60(b)(1); *see also, e.g., A.W. Ross, Inc.*, 19 BNA OSHC 1147, 1148-49 (No. 99-0945, 2000) (applying Rule 60(b)(1) to a late-filed notice of contest). The moving party must also allege a meritorious defense to prevail under Rule 60(b)(1). *Nw. Conduit Corp.*, 18 BNA OSHC 1948, 1951 (No. 97-0851, 1999).

"A motion for relief from judgment [under Rule 60(b)] is generally not favored and is properly granted only upon a showing of exceptional circumstances." *United States v. Int'l Bhd. of Teamsters*, 247 F.3d 370, 391 (2d Cir. 2001). Respondent bears the burden of demonstrating that it is entitled to relief under Rule 60(b)(1). *Id.*; *Louisiana-Pacific Corp.*, 13 BNA OSHC 2020, 2021 (No. 86-1266, 1989) ("The burden is on the employer to show sufficient basis for relief under the

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*DeRemer*, No. 8:25-cv-2125-KKM-NHA, 2026 WL 261571, at \*2 (M.D. Fla., Feb. 2, 2026) (refusing to extend a filing deadline to account for the government shutdown).

<sup>9</sup> Although the Second Circuit, where this case arose, has concluded that the Commission has no jurisdiction over late-filed notices of contest and therefore cannot grant relief under Rule 60(b) (*see Chao v. Russell P. Le Frois Builders, Inc.*, 291 F.3d 219, 229-30 (2d Cir. 2002)), the Commission has nonetheless concluded that it can exercise jurisdiction in late-notice-of-contest cases arising in the Second Circuit because an employer "could appeal [the] matter to the D.C. Circuit, which has not addressed whether the Commission has authority to grant Rule 60(b) relief." *TH Constr. Grp.*, No. 22-0739, 2023 WL 1223909, at \*2 (OSHRC, Jan. 24, 2023).

<sup>10</sup> Having thoroughly reviewed the Late Notice of Contest, the Court finds that it does not lend itself toward any of the other bases of relief provided by Rule 60(b). *See* note 4, *supra*. Accordingly, the Court's analysis will focus only on the avenue of relief provided by Rule 60(b)(1). The Court notes that this was also the type of relief Respondent was directed to address in the former judge's June 22, 2026, order.

rule”). As previously noted, because Respondent is self-represented, the Court is required to give a generous reading of Respondent’s Late Notice of Contest in determining whether it is entitled to relief under the Rule. *See Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474-75 (2d. Cir. 2006); *Graham*, 89 F.3d at 79.

*Meritorious Defense Established*

As to a meritorious defense to the Citation, Respondent alleges as follows:

This citation has been incorrectly attributed to our company.

The work in question was subcontracted to an independent contractor, and the individuals on site at the time of the OSHA inspection were not employees of our company. Our company did not supervise, control, or direct the work being performed. The presence of our owner at the site was limited to communicating project expectations to the subcontractor, not managing or overseeing the workers.

Additionally, our company has not performed roofing work for several years and removed roofing from our liability insurance coverage prior to this project. This work was outside the scope of our business operations.

Late Not. of Contest at 1.

The Court finds these allegations, if proven true, would present a meritorious defense to the alleged violations. Respondent would not be liable for the alleged violations if the workers referenced in the Citation were not its employees. *See Van Buren-Madawaska Corp.*, 13 BNA OSHC 2157, 2158 (No. 87-214, 1989) (consolidated) (“[A] business organization is generally only liable under the Act for violations that affect the safety or health of persons with whom it has entered into an employment relationship.”); *see also Freightcar Am., Inc.*, No. 18-0970, 2021 WL 2311871, at \*2-4 (OSHRC, Mar. 3, 2021) (no liability for the violation where employer-employee relationship was not established). Moreover, to the extent the Citation is alleging multi-employer

liability in this case,<sup>11</sup> Respondent could potentially not be liable for another employer's violations if it demonstrated that it was not the controlling employer of the worksite. *See Schuler-Haas Elec. Corp.*, 21 BNA OSHC 1489, 1494 (No. 03-0322, 2006) (under the multi-employer worksite doctrine, an employer can demonstrate a defense to a violation by showing it was not the controlling employer or responsible for the violative condition).

The Court finds Respondent has demonstrated a meritorious defense to the violations alleged in the Citation.

#### *Excusable Neglect Not Established*

As to whether Respondent has established "excusable neglect," the Commission applies the framework set out by the Supreme Court in *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993) ("*Pioneer*"). *See, e.g., Nw. Conduit Corp.*, 18 BNA OSHC at 1951 (Commission applying *Pioneer*). There, the Court stated:

With regard to [whether] a party's neglect of a deadline is excusable ... we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include ... the danger of prejudice to the [opposing party], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.

*Pioneer*, 380 U.S. at 395.

In addressing why its Late Notice of Contest was late, Respondent states as follows:

We made multiple attempts to contact OSHA upon receiving the initial notice. However, we encountered a recorded message indicating that the office was closed due to a government shutdown. Messages were left, but we did not receive a response. We later received a voicemail that we are not sure if it was in response to our message, but it referenced business dissolution, which is not applicable to our situation.

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<sup>11</sup> *See generally* Multi-Employer Citation Policy, OSHA Instruction (Dec. 10, 1999) (setting forth OSHA's position on multi-employer liability); *see also Brennan v. OSHRC (Underhill Constr. Corp.)*, 513 F.2d 1032, 1037-38 (2d Cir. 1975); *Summit Contractors, Inc.*, 22 BNA OSHC 1777, 1779-80 (No. 03-1622, 2009).

Due to these circumstances, we were unable to properly engage in the citation process within the expected timeframe.

Late Not. of Contest at 1.

The Court finds these allegations, even if proven true, do not constitute “a showing of exceptional circumstances” sufficient to justify Rule 60(b)(1) relief. *Int’l Bhd. of Teamsters*, 247 F.3d at 391.

Although the Court finds all of the *Pioneer* factors weigh against granting Respondent relief, “the reason for the delay, including whether it was within the reasonable control of [Respondent]” and “whether [Respondent] acted in good faith” weigh most heavily against Respondent here. *Pioneer*, 380 U.S. at 395. The Court acknowledges that the government shutdown, which started on October 1, 2025, occurred between Respondent’s receipt of the Citation on September 20, 2025, and what would have otherwise been the end of the filing period for Respondent’s notice of contest on October 10, 2025. *See* 29 U.S.C. § 659(a). Therefore, the Court accepts Respondent’s representation that it could not reach OSHA personnel to discuss its options with regard to the Citation during the shutdown period. However, Respondent has not explained how the shutdown affected its ability to send a notice of contest using still-available methods like the U.S. Postal Service. *See, e.g., Beltran*, 2026 WL 261571, at \*1 (denying Rule 60(b) relief where the party had the ability to serve a government adversary by way of the USPS during the shutdown). Additionally, after contacting OSHA in the midst of the shutdown and receiving only a “recorded message,” Respondent has not explained why it failed to contact OSHA again when the shutdown ended in November of 2025. In fact, Respondent has not established that it made *any* effort to address the Citation once the shutdown ended. *Cf. Knock Out Homes, Inc.*, No. 21-0281, 2022 WL 1639607, at \*9 (OSHR CALJ, April 1, 2022) (concluding that the employer was not entitled to Rule

60(b) relief in part because it “made at most a minimal effort to comply with [its] obligations” under the Commission’s rules). And, perhaps most glaringly, Respondent has provided no explanation as to why, once the shutdown was over, it did not file its Late Notice of Contest until nearly six months later.<sup>12</sup>

Based on the above, the Court finds that even if Respondent is faultless for failing to file its notice of contest during the government shutdown (*but see* note 8, *supra*), Respondent’s apparent lack of effort to timely file its Late Notice of Contest after the shutdown ended heavily leans the Court toward denying relief under Rule 60(b)(1) under these two *Pioneer* factors. *See Padilla v. Maersk Line, Ltd.*, 721 F.3d 77, 84 (2d Cir. 2013) (“[A] delay attributable solely to a defendant’s failure to act with diligence cannot be characterized as ‘excusable neglect’” (quotations omitted)); *State St. Bank & Trust Co. v. Inversiones Errazuriz Limitada*, 374 F.3d 158, 177 (2d Cir. 2004) (“[W]here a party fails to act with diligence, he will be unable to demonstrate that his conduct constituted ‘excusable neglect.’”); *see also Knock Out Homes, Inc.*, 2022 WL 1639607, at \*9 (finding that the employer’s lack of efforts to fulfill its obligations constituted “inexcusable inattentiveness or neglect rather than excusable carelessness” and therefore denying Rule 60(b) relief) (ALJ) (quoting *Cato v. Thompson*, 118 F. App’x 93, 97 (7th Cir. 2004)).

Neither of the remaining *Pioneer* factors, i.e., “the danger of prejudice to the [opposing party]” and “the length of the delay and its potential impact on judicial proceedings,” weighs in favor of granting Respondent’s request for relief. *Pioneer*, 380 U.S. at 395. The Citation was issued nearly a year ago, but this matter has yet to proceed beyond the contest phase due to

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<sup>12</sup> In this same vein, Respondent has provided no explanation as to why, after it was again reminded of the Citation when OSHA sent its demand letter on March 13, 2026, it waited another two months to file its Late Notice of Contest. *See* Ex. B to Sec’y Response.

Respondent's months-long delay in filing its Late Notice of Contest. This length of delay tilts in favor of denying Respondent's request for relief under both of these *Pioneer* factors. See *In re Enron Corp.*, 419 F.3d 115, 130 (2d Cir. 2005) (finding no abuse of discretion where the bankruptcy court concluded a six-month delay was an "unacceptable delay" for purposes of denying Rule 60(b) relief); *id.* ("Many of the[] considerations [in analyzing danger of prejudice to the opposing party] are, of course, the same as those taken into account in evaluating the length of the delay...."); see also *United States v. Cates*, 716 F.3d 445, 448-49 (7th Cir. 2013) (finding a "lengthy delay" of two months without explanation disfavored granting Rule 60(b) relief); *Knock Out Homes, Inc.*, 2022 WL 1639607, at \*9 (finding that the delay of a year caused by the employer weighed against granting Rule 60(b) relief) (ALJ); *cf. Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1224-25 (9th Cir. 2000) (finding prejudice from a month's delay in seeking Rule 60(b) relief was "minimal" and therefore favored granting relief).

Finally, the Court also notes that Respondent's self-represented status does not, without more, excuse its failure to timely file a notice of contest. See *Triestman*, 470 F.3d at 477 ("*pro se* status 'does not exempt a party from compliance with relevant rules of procedural and substantive law'") (quoting *Traguth v. Zuck*, 710 F.2d 90, 95 (2d Cir. 1983)); *Edwards v. I.N.S.*, 59 F.3d 5, 8 (2d Cir. 1995) ("[W]hile a *pro se* litigant's pleading must be construed liberally ... *pro se* litigants are generally required to inform themselves regarding procedural rules and to comply with them." (citation modified)); *Williams v. New York City Dep't of Corr.*, 219 F.R.D. 78, 85 (S.D.N.Y. 2003) ("[A]ny failings attributable to plaintiff's *pro se* status could not be a basis for relief under Rule 60(b)"; by itself, the fact that plaintiff is *pro se* does not count as an exceptional circumstance.") (quoting *Salter v. Hooker Chem., Durez Plastic & Chem. Div.*, 119 F.R.D. 7, 9 (W.D.N.Y. 1988)).

Based on the above, the Court finds that Respondent has failed to demonstrate excusable

neglect for its untimely filing of the Late Notice of Contest.

*Conclusion*

Respondent was specifically directed to submit additional evidence or information to demonstrate that it was entitled to relief under Rule 60(b), but it failed to do so. On the available record, the Court finds that, although Respondent established a meritorious defense to the violation, it failed to establish excusable neglect for its late filing. Accordingly, the Court DENIES Respondent's request for relief under Rule 60(b)(1).

**ORDER**

Based on the foregoing, Respondent's request for relief under Rule 60(b) of the Federal Rules of Civil Procedure is DENIED. Respondent's Late Notice of Contest, having been filed months after the statutory period, is DISMISSED. By operation of law, the Citation is DEEMED a final order of the Commission, and its proposed penalty of \$22,698 is ASSESSED.

SO ORDERED.

/s/  
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Keith E. Bell  
Chief Administrative Law Judge  
Occupational Safety and Health  
Review Commission

Dated: September 1, 2026  
Washington, D.C.