

COMMISSIONER OF LABOR OF THE	)	
STATE OF NORTH CAROLINA,	)	DOCKET NO: OSHANC 2026-6783
	)	
COMPLAINANT,	)	INSPECTION NO: 318325420
	)	
	)	CSHO ID.: T1170
	)	
v.	)	
	)	
	)	FILED
	)	
MAPLE LEAF CONSTRUCTION, INC.	)	AUG 20 2026
<i>and its successors,</i>	)	
	)	NC Occupational Safety & Health
	)	Review Commission
RESPONDENT.	)	

This matter comes before the undersigned Hearing Examiner on Respondent's Motion for Declaration of Default and Decision Against the Complainant and Complainant's Motion to Deem Complaint Timely Filed. Having reviewed the motions, responses, record materials, and applicable law, the undersigned enters the following Order.

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The Court's file demonstrates that on and before July 2, 2026 Respondent served its notice of contest and its position statement requesting formal pleadings.

Furthermore, the file demonstrates that Respondent's documents were properly served, explicitly following the Commissioner of Labor's instructions, and, that Respondent's documents were timely received by the Commission and by the Complainant. Complainant then had twenty days to file a formal Complaint; the filing period expired on July 22, 2026. Resp. Mot., Ex's A-C. 24 NCAC 0303(f); 0304(1)(a). The formal Complaint was not filed until August 5, 2026. Respondent seeks a declaration of default and decision against Complainant under Commission Rules .0303(f), .0304(1)(a), and .0309(a).

Complainant acknowledges receiving Respondent's Statement of Position on July 2, 2026, acknowledges that Complainant's counsel was assigned this case on July 8, 2026 and acknowledges that the Complaint deadline was July 22, 2026. Complainant states that administrative staffing shortages, a colleague's medical leave, the July 3 State holiday, one paralegal serving six attorneys while training a new legal assistant created a delay in counsel's receipt of the position statement which she did not receive until August 3, 2026. Complainant further states that counsel called Respondent's counsel on August 4, 2026. Respondent's Motion for Default was filed the same day. Complainant seeks a declaration that the Complaint filed on August 5, 2026 be deemed timely filed. Complainant argues Respondent suffered no prejudice from the 14-day delay, the citations gave

Respondent notice of the allegations, and that the delay was inadvertent and not for an improper purpose.

Commission Rule .0309(a) provides that failure to file or serve any pleading or otherwise proceed as provided by the Rules “may result” in a declaration of default and decision against the defaulting party. Whether or not to declare a default is a discretionary decision, not an automatic consequence of a late filing.

Pleadings required to be filed by the Commission are not a jurisdictional requirement, but, rather subject to the Commission's procedural rules. N.C. Gen. Stat. §95-137(b)(4) (Commission acquires jurisdiction upon receipt of Notice of Contest). Rule 0304(1) (providing for the procedures to be followed when formal pleadings are requested).

The Commission's Rules provide that when a request for an extension of time to perform an act, including the filing of a pleading, is made after "after the designated time for filing has expired" the request may be granted in exigent circumstances and upon the requesting party's explanation of the reasons for failing to make the request prior to the expiration of the deadline. 24 NCAC 03. 0105. "Exigent circumstances" is not defined within the rules; however Black's Law Dictionary defines "exigent circumstances: as "a situation that demands unusual or immediate action and that may allow people to circumvent usual procedures." Similarly, when used as an adjective "exigent" means "requiring immediate action or aid" and "urgent." Black's Law Dictionary (12th ed. 2024).

The undersigned finds that there is a tension between Commission Rule 0309(a) and Rule 0105 that presents a unique circumstance in this case. On the one hand, whether or not to allow the Respondent's motion is an exercise of the Hearing Examiner's discretion, based on the explicit language of Rule 0309(a). On the other hand, whether or not to allow Complainant's requested retroactive extension of time requires a finding that the Complainant's reasons for the delay constitute exigent circumstances, which the undersigned cannot find based on Complainant's explanation of the reasons for delay.

Complainant's explanation rests on internal staffing shortages, medical leave of a colleague, a State holiday, one paralegal serving six attorneys while training a new assistant, and counsel's not receiving the Statement of Position until August 3, 2026. Those circumstances show an internal administrative breakdown rather than an external circumstance preventing filing. Where a missed deadline resulted from a party or counsel not paying attention to a deadline, particularly where the record lacks extenuating circumstances, the delay may be characterized as attorney negligence, and, therefore neither meeting the standard for "excusable neglect" or "extenuating circumstances." *Sellers v. FMC Corp.*, 216 N.C. App. 134, 141, 716 S.E.2d 661, 666 (2011) (citing *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'shp*, 507 U.S. 380 (1993) and other examples specifically excluding attorney negligence as a factor contributing to excusable neglect). See also *Egen v. Excalibur Resort Prof'l*, 191 N.C. App. 724, 731, 663 S.E.2d 914, 919 (2008) ("Inadvertent conduct that does not demonstrate diligence" does not constitute excusable neglect) (cleaned up).

Furthermore, Rule 1.3 of the N.C. Rules of Professional Conduct require that "a lawyer shall act with reasonable diligence and promptness in representing a client." Where counsel was aware of her assignment of this matter on July 8, 2026, it was counsel's responsibility, not her staff's, to ensure that deadlines were properly calendared.

Yet, the exercise of discretion required to be used in addressing a motion for default judgment requires consideration of the totality of the circumstances involved in the litigation. The undersigned is mindful that the Commission's rules exist to provide procedural regularity and protection of all litigants from gross noncompliance, including protecting employers from agency noncompliance. Balancing the need for procedural regularity, however, is a strong policy favoring decisions based on the underlying merits of each case. "Default judgments are not favored in the law" and doubts as to whether judicial interests are served by default should be resolved in favor of giving litigants an opportunity to have the merits of their case reached. *Kennedy v. Starr*, 62 N.C. App. 182, 187-188, 302 S.E.2d 497, 500-501 (1983) (Whichard, J. concurring) (collecting decisions). Respondent has not identified any prejudice resulting from the two week delay nor any impediment to the overall administration of justice in this case. More specifically, the present record does not show lost evidence, unavailable witnesses, impaired defense preparation, or disruption of a scheduled hearing. This case involves three alleged serious safety violations and resolution of the merits of the citations is central to the

Commission's purpose in providing for accurate and effective enforcement of occupational health and safety standards.

How, then, to resolve the tension between Commission Rule 0105, which by its language, requires denial of Complainant's motion to deem the August 5, 2026 pleading timely filed, and, Rule 0309(a) which requires an exercise of discretion in deciding whether to grant Respondent's Motion for Default? It is the undersigned's belief that denial of the Complainant's motion necessarily requires considering what would happen next. See, *Comm'r v. Mainscape*, NC OSH No. 2023-6522, Wetsch, J., presiding, Order on Motion to Dismiss, *2-3 (May 23, 2023). In this case, if the undersigned denied the requested extension to file *and* allowed the motion for default, Complainant could then seek to have the default judgment set aside under N.C. Civ. P., Rule 60(b) and Commission Rule .0309(b).

The motion under Rule 60(b) would require an analysis under the "excusable neglect" standard, including a consideration of the specific factors identified by the U.S. Supreme Court in *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'shp*, 507 U.S. 380, 392 (1993) (excusable "is a somewhat 'elastic concept' and is not limited strictly to omissions caused by circumstances beyond the control of the movant.") See also *Lost Forest Dev. v. Comm'r of Labor of N.C.*, 280 N.C. App. 174, 181, 867 S.E.2d 338,343 (2021) (explaining the Supreme Court's test for excusable neglect and noting that these factors would be considered under a Rule 60(b) motion).

Analyzing a Rule 60(b) motion under the excusable neglect standard is “at bottom an equitable [inquiry], taking account of all relevant circumstances,” including prejudice, length of delay, reason for delay, and good faith. *Pioneer Inv. Servs.* 507 U.S. at 395. While the reason for delay would still not favor the Complainant, absent additional information, the other factors, as explained *supra*, would favor allowing a motion to set aside an entry of default.

Therefore, in order to avoid a more prolonged process and prevent further delay and expense to the parties, (See Commission Rule .0709, requiring that the Commission Rules be construed to secure expeditious, just and inexpensive determination of every case), the Undersigned will ALLOW Complainant's motion to deem the Complaint filed August 5, 2026 timely filed and will DENY Respondent's Motion for Default Judgment. In addition, the undersigned will ALLOW Respondent an additional fourteen day extension of time within which to file its Answer to the Complaint or otherwise respond. Respondent's Answer or other response is due thirty-four days from the entry of this Order.

This the 20th day of August 2026.

A handwritten signature in black ink that reads "Mary-Ann Leon". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Mary-Ann Leon
Hearing Examiner Presiding
maleon@leonlaw.org

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served a copy of the foregoing ORDER upon:

TODD A JONES
HAYNSWORTH SINKLER BOYD
tjones@hsblawfirm.com

MADISON BEVERIDGE
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LABOR SECTION
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NC DEPARTMENT OF LABOR
GENERAL COUNSEL'S OFFICE

Via email.

THIS THE 21st DAY OF AUGUST 2026.

PAUL E. SMITH
CHAIRMAN

KBSluss

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