

United States Court of Appeals  
For the Eighth Circuit

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No. 14-2366

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Robinson Masonry

*Petitioner*

v.

Thomas E. Perez, Secretary of Labor, United States Department of Labor

*Respondent*

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Petition for Review of an Order of the  
Occupational Safety & Health Review Commission

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Submitted: January 28, 2015

Filed: February 2, 2015

[Unpublished]

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Before SMITH, GRUENDER, and BENTON, Circuit Judges.

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PER CURIAM.

Robinson Masonry (Robinson) petitions for review of an adverse decision by the Occupational Safety and Health Review Commission. The administrative law judge (ALJ) denied Robinson relief from judgment under Federal Rule of Civil Procedure 60(b) for citations and penalties imposed against it, and vacated Robinson's

untimely notices of contest.<sup>1</sup> In this court, Robinson argues that equitable tolling applies to its untimely notices because an Occupational Safety and Health Administration official induced it to miss the contest-period deadline. After careful review, this court concludes that the ALJ's factual findings were supported by substantial evidence, and that the ALJ did not abuse its discretion in ruling that Robinson did not establish grounds for relief under Rule 60(b). *See* 29 U.S.C. § 660(a) (jurisdiction); *Donovan v. Anheuser-Busch, Inc.*, 666 F.2d 315, 324-25 (8th Cir. 1981) (standard of review); *Roy Kay, Inc.*, 13 BNA OSHC 2021, 1989 WL 223306, at \*1 (No. 88-1748, 1989) (burden is on employer who files late notice of contest to show sufficient basis for relief under Rule 60(b)).

The petition is denied. *See* 8th Cir. R. 47B.

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<sup>1</sup>*See* 29 U.S.C. § 659(a) (employer has 15 working days within which to notify Secretary of Labor that he wishes to contest citation or proposed assessment of penalty; if employer fails to do so, “the citation and the assessment [of penalty], as proposed, shall be deemed a final order of the Commission”).