



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.

CALDWELL COATINGS, LLC,

Respondent.

OSHRC Docket Nos. 15-1216
15-1217
(CONSOLIDATED)

APPEARANCES:

Josh Bernstein, Trial Attorney; Madeleine T. Le, Counsel for Occupational Safety and Health; James E. Culp, Regional Solicitor; M. Patricia Smith, Solicitor of Labor; U.S. Department of Labor, Washington, DC
For the Complainant

Carl Carruth; McNair Law Firm, P.A., Columbia, SC
For the Respondent

DIRECTION FOR REVIEW AND REMAND ORDER

Before: ATTWOOD, Chairman; and MACDOUGALL, Commissioner.

BY THE COMMISSION:

An order issued by Administrative Law Judge Patrick B. Augustine approving a settlement agreement between Caldwell Coatings, LLC and the Secretary became a final order of the Commission on October 28, 2016. For the reasons that follow, we set aside the final order under Federal Rule of Civil Procedure 60(a), direct review of the case, and remand it to the judge for further proceedings.

The Occupational Safety and Health Administration issued Caldwell Coatings two sets of citations: one set issued under OSHA inspection number 1056257 (Docket Number 15-1216), and the other issued under OSHA inspection number 1056287 (Docket Number 15-1217). These cases were later consolidated. *See* 29 C.F.R § 2200.9 (consolidation). The settlement agreement, submitted by the parties to the judge for approval on August 26, 2016, withdrew the citations under

Docket Number 15-1216, but it failed to address the citations under Docket Number 15-1217. Because the agreement did not fully resolve one of the consolidated cases, the judge's order approving the settlement agreement did not constitute a "final disposition of the proceedings" under Commission Rule 90(a), 29 C.F.R. § 2200.90(a). Nonetheless, the order was submitted for docketing and subsequently docketed on September 28, 2016, thereby commencing the thirty-day period before "[t]he report of the administrative law judge . . . become[s] the final order of the Commission." 29 U.S.C. § 661(j); *see also* 29 C.F.R. § 2200.90(b)(2) (docketing of judge's report by Executive Secretary). Because no Commissioner directed the case for review, the order became final on October 28, 2016.

On December 5, 2016, the parties filed with the Commission a Joint Notice of Withdrawal of Citation and Complaint regarding Docket Number 15-1217. About a week later, the Secretary filed an unopposed Motion to Correct Settlement Agreement to include these withdrawn citations. Although the motion fails to cite any legal authority as the basis for correcting the settlement agreement, we find it appropriate to grant relief from the final order under Federal Rule of Civil Procedure 60(a), which permits the Commission "on its own" to "correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record." *See Robert Lewis Rosen Assoc., Ltd. v. Webb*, 473 F.3d 498, 505 & n.12 (2d Cir. 2007) (judgment corrected pursuant to Federal Rule of Civil Procedure 60(a) "[b]ecause the plain language of the rule indicate[d] that a judge may correct a judgment thereunder *sua sponte*," allowing district court to award additional sums contemplated, but not specifically mentioned, in arbitrator's award that court previously confirmed in full). Here, the mistake arose from the judge's "oversight" in submitting his order for docketing even though the approved settlement agreement did not resolve all the citations at issue. *See Sterling Techs., Inc.*, 25 BNA OSHC 1891, 1892 (No. 15-1772, 2016) (setting aside final order under Federal Rule of Civil Procedure 60(a) because the judge's order approving the informal settlement agreement did not fully resolve the case).

We thus set aside the final order under Federal Rule of Civil Procedure 60(a) and remand the case to the judge to consider the Secretary's unopposed motion to correct the parties' settlement agreement.

SO ORDERED.

/s/
Cynthia L. Attwood
Chairman

/s/
Heather L. MacDougall
Commissioner

Dated: January 12, 2017



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ORDER APPROVING SETTLEMENT AGREEMENT

The Commission has jurisdiction over the subject matter of this case and over the Parties by virtue of the filing of a timely *Notice of Contest*.

The *Settlement Agreement* (“*Agreement*”) between the Parties has been considered. The *Agreement* has been served on all Parties and Authorized Employee Representatives and posted in the manner prescribed by Commission Rule 7(g).¹ Ten days have passed since service and posting and no objection to the *Agreement* has been filed.

The *Agreement* is *APPROVED* under 5 U.S.C. §554(c)(1) and Commission Rule 100(c) as in compliance with those sections. The terms of the *Agreement* are incorporated, in their entirety, by reference in this *ORDER*.

This *ORDER* shall become final thirty (30) days from the date of docketing by the Executive Secretary, unless review thereof is directed by a Commission Member within that time. 29 U.S.C. §661(j).

SO ORDERED.

Dated: September 23, 2016

/s/ Patrick B. Augustine

Patrick B. Augustine
Judge, OSHRC

¹Rules of Procedure of the Occupational Safety and Health Review Commission, 29 C.F.R. §2200.1 -.212, as amended, 55 Fed. Reg. 22780-4 (June 4, 1990).