



United States of America  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
1120 20<sup>th</sup> Street, N.W., Ninth Floor  
Washington, DC 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

OSHRC Docket No. 14-0565

RS SEWING, INC.,

Respondent.

**APPEARANCES:**

Patrick L. DePace, Trial Attorney; Benjamin T. Chinni, Associate Regional Solicitor;  
Christine Z. Heri, Regional Solicitor; M. Patricia Smith, Solicitor of Labor; U.S.  
Department of Labor, Washington, DC  
For the Complainant

Rich Spencer, pro se, Canton, OH  
For the Respondent

**ORDER**

Before: MACDOUGALL, Acting Chairman; ATTWOOD, Commissioner.

**BY THE COMMISSION:**

At issue before the Commission is a motion filed by the Secretary seeking relief under Federal Rule of Civil Procedure 60(b)(1) from a final order. For the reasons that follow, the motion is denied.

On February 4, 2014, the Occupational Safety and Health Administration issued Respondent a nine-item serious citation and a two-item other-than-serious citation, with a total proposed penalty of \$20,300. Respondent contested the citation, but it never filed an answer to the Secretary's complaint. On July 18, 2014, the Secretary submitted a Notification of Settlement to Chief Judge Covette Rooney. On September 12, 2015—eight days after the judge issued an Order of Default based on Respondent's failure to file an answer—the Secretary

submitted to the judge an executed settlement agreement.<sup>1</sup> The judge’s default order was docketed with the Commission on September 21, 2015, and became a final order on October 21, 2015. 29 U.S.C. § 661(j) (judge’s decision becomes final order of the Commission within thirty days of issuance absent direction for review).

On January 10, 2017, the Secretary filed the instant motion, asking the Commission for relief under Federal Rule of Civil Procedure 60(b)(1) due to an alleged “mistake.” Fed. R. Civ. Pro. 60(b)(1) (allows for relief from final judgment based upon “mistake, inadvertence, surprise, or excusable neglect”); *see also* 29 C.F.R. § 2200.2(b) (applicability of Federal Rules of Civil Procedure to Commission proceedings). According to the Secretary, “the parties were not aware that an Order of Default had been entered” when the settlement agreement was transmitted by the Secretary to the judge.<sup>2</sup> A motion under Federal Rule of Civil Procedure 60(b)(1) cannot be made more than a year after the final judgment was entered. Fed. R. Civ. P. 60(c)(1) (explaining timing for Rule 60(b) motions). Because the Secretary filed his motion fourteen months after the Order of Default became a final order, relief cannot be granted under Federal Rule of Civil Procedure 60(b)(1).<sup>3</sup> The Secretary’s motion is therefore denied.

SO ORDERED.

/s/  
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Heather L. MacDougall  
Acting Chairman

/s/  
\_\_\_\_\_  
Cynthia L. Attwood  
Commissioner

Dated: January 25, 2017

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<sup>1</sup> The Notice of Decision states that copies of the judge’s order were mailed to the parties on September 4, 2015.

<sup>2</sup> Although the Secretary’s assertion is attributed to both parties, his motion does not comply with Commission Rule 40(a), 29 C.F.R. § 2200.40(a), in that it fails to state that the Secretary conferred with Respondent prior to filing his motion.

<sup>3</sup> Although the Secretary seeks relief only under subsection (1) of Federal Rule of Civil Procedure 60(b), relief also cannot be granted under subsection (6) of the Rule. While the Rule’s one-year limitation does not apply to subsection (6), which provides that relief may be granted “for any other reason,” subsections (1) and (6) “are mutually exclusive, and thus a party who fail[s] to take timely action due to [a subsection (1) reason] may not seek relief more than a year after the judgment by resorting to subsection (6).” *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 393 (1993).