

Ms. Rebecca Miller, a safety and health assistant employed by the Occupational Safety and Health Administration testified that her duty, among others is to make out citations and send them out to the companies involved by certified mail. Included with the citations in the mailing is "an OSHA penalty sheet that advises them the OSHA's penalties--what the penalties are. Also an employer's rights booklet and the two copies that they get, and I send them out certified mail." She identified her initial on the office diary sheet as having duly sent the citation out by certified mail to the Respondent. The P.O. green card verifying the delivery was signed by one S. Mosher, who was admittedly an employee of the Respondent. Mr. Moskella admitted the receipt of mail, but argues he did not see any citation. Basically, the allegation for failing to file a timely notice of contest is that we received an empty envelope from the government. In short, the Secretary established that after an inspection of the Respondent, a citation was issued, and under their regular business procedures mailed the citation and accompany booklet on or before December 7, and that the certified mailing was received by the Respondent on or before December 7. The allegation that the received document was an empty envelope is not believable and incredible under the circumstances herein. Not only was the citation sent but another booklet which would have increased the bulk of the mailing and the sender who testified to her procedures would have surely seen any discrepancies in the mailing which she denied having detailed here mailing procedures. The Respondent did not file its notice of contest until February 19, 2001 after receiving a dunning notice for the sums owed herein. This was well after the 15 day contest period.

The citation sent to the Respondent plainly states the requirement to file a notice of contest within the prescribed time period. The OSHA booklet accompanying the citation additionally states and emphasizes the time limitations. The Commission has held that a business must have orderly procedures for the handling of important documents and has denied relief under Rule 60(b) where improper handling of such documents results from lack of care, mishandling by company personnel etc. It is clear from a review of the total evidence herein that the untimely filing was due to clerical mishandling or other negligence on part of the Respondent. which in the light of Commission decisions (See Louisiana-Pacific Corp., 13 BNA OSHC 2020, 2021; J.F. Shea Co., 15 BNA OSHA 1092, 1094; E.K. Constr.Co., 15 BNA OSHC 1165, 1166), provides no basis for relief under Rule

60(b). The mistake of the Respondent the handling of the citation and accompanying documents was neither excusable nor justified by any misconduct or misleading on the part of the Secretary. The motion of the Secretary to dismiss is GRANTED, the notice of contest is dismissed, and the citation and notification of penalty is AFFIRMED in all respects.

SO ORDERED.

/s/
IRVING SOMMER
Chief Judge

DATED: 10 October 2001
Washington, D.C.