

caused by deception on the part of the Secretary or by the Secretary's failure to follow proper procedures. An employer is also entitled to relief under the Federal Rules of Civil Procedure 60(b)(1) if it establishes that the Commission's final order was entered as a result of "mistake, inadvertence, surprise or excusable neglect", or under 60(b)(6) for "any other reason justifying relief", including mitigating circumstances such as illness, or a disability which would prevent a party from protecting its interests. There is no contention that the Secretary acted improperly in this matter.

The cover letter accompanying the citations states on page 2 under the heading RIGHT TO CONTEST as follows: "You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting underlying violations. Unless you inform the Area Director in writing that you intend to contest the citation(s) and/or proposed penalty(ies) within 15 working days after receipt, the citation(s) and the proposed penalty(ies) will become a final order of the Occupational Safety and Health Review Commission and may not be reviewed by any court or agency.

The Commission has held that the OSHA citation "plainly state(s) the requirement to file a notice of contest within the prescribed period". The Commission has held that an employer "must bear the burden of its own lack of diligence in failing to carefully read and act upon the information contained in the citations", and that Rule 60(b) cannot be invoked to "give relief to a party who has chosen a course of action which in retrospect appears unfortunate or where error or miscalculation is traceable to a lack of care." *Accrom Constr. Serv.*, 15 BNA 1123,1126 (No. 88-2291,1991).

The Respondent had clear notice of the need to contest within the 15 working day period, and it is responsible for its failure to act promptly on its government mail. The circumstances herein are insufficient to establish entitlement to relief under Rule 60(b).

ORDER

For the reasons set forth above, the Secretary's motion to dismiss the notice of contest of the Respondent is GRANTED. The Citation and notification of penalties is AFFIRMED in all respects.

/S/
IRVING SOMMER
Chief Judge

DATED: 30 AUG 2001
Washington, D.C.