

SECRETARY OF LABOR,

Complainant,

v.

RED-HAWK CONSTRUCTION, INC.,

Respondent.

OSHRC Docket No. 02-1180

### ***ORDER***

During the pendency of this case before the Chief Administrative Law Judge, the Secretary filed a Motion to Dismiss Notice of Contest or In the Alternative Motion for Judgment on the Pleadings. The Chief Judge granted the Secretary's Motion to Dismiss Notice of Contest based on the findings that the Secretary had issued a Complaint to the Respondent, the Respondent had failed to file an answer, and the Respondent had failed to respond to the Secretary's Motion. The Chief Judge also affirmed the Citation and Notification of Penalty as issued.

The Respondent has now filed a Petition for Discretionary Review requesting that the Commission set aside the sanctions imposed by the Chief Judge. In support of its Petition for Discretionary Review, the Respondent's assertions include the following: (1) when the Complaint was filed, it was served on its president; (2) however, the president's interest in the Respondent was subsequently purchased by several shareholders; (3) the current principals and shareholders of the Respondent were never informed of the Complaint; and (4) the current principals and shareholders of the Respondent did not receive the Secretary's Motion.

In view of the Respondent's assertions concerning lack of service, we remand this case to the Chief Judge to consider those assertions as set forth by the Respondent in its Petition for Discretionary Review and to institute further proceedings as appropriate. *See Lavelle Construction*, 19 BNA OSHC 1149, 2000 CCH OSHD ¶ 32,200 (No. 99-1921, 2000).

So Ordered.

Date: December 11, 2002

/s/

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W. Scott Railton  
Chairman

/s/

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Thomasina V. Rogers  
Commissioner

/s/

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James M. Stephens  
Commissioner

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**ORDER**

Motion by the Secretary to dismiss the Respondent's Notice of Contest herein for failing to file an answer to the complaint.

There was no response to the motion. The record demonstrates that the Secretary issued a complaint to the Respondent dated July 30, 2002 which was received on August 1, 2002. Under Rule 34 of the Commission's Rules of Procedure an answer must be filed within twenty days of service of the complaint. The Respondent failed to file an answer as required. Accordingly, the motion of the Secretary is GRANTED. The Respondent's Notice of Contest is dismissed. The Citation and Notification of Penalty is AFFIRMED as issued.

/s/

IRVING SOMMER

Chief Judge

DATED: October 28, 2002  
Washington, D.C.