

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No. 01-0172
	:	
CASHIOLA CONSTRUCTION,	:	
	:	
Respondent.	:	
	:	

DECISION AND ORDER

This case is before the Occupational Safety and Health Review Commission (the Commission) pursuant to section 10 of the Occupational Safety and Health Act of 1970, 29 U.S.C. sec. 651 et seq (the Act) to determine whether the Secretary's motion to dismiss Respondent's untimely notice of contest should be granted. The Respondent has filed no response to the motion.

BACKGROUND

The Occupational Safety and Health Administration (OSHA) inspected a work site of Respondent, resulting in the issuance of a citation and notification of proposed penalty on November 8, 2000. Respondent was required to notify OSHA of its intent to contest the citation within 15 working days of its receipt, and failure to do so would result in the citation and penalty becoming a final judgment of the Commission by operation of law. The citation setting forth the alleged violations and the proposed penalty was sent by certified mail and received by the Respondent on November 9, 2000. The statutory notice of contest period ended on December 1, 2000 and a notice of contest was not filed by the Respondent on or before said date. By letter received by OSHA on January 22, 2001, the Respondent indicated he desired to contest the case alleging he was not the proper party herein.

The record plainly shows that the Respondent did not file its notice of contest within the 15 day period. An otherwise untimely notice of contest may be accepted where the delay in filing was 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 if it establishes that the Commission's final order was entered as a result of ``mistake, inadvertence,

