



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

SECRETARY OF LABOR,

Complainant,

v.

RAKICH MASONRY,

Respondent.

OSHRC Docket No. 06-1159

REMAND ORDER

In an order dated November 24, 2006, Chief Administrative Judge Irving Sommer dismissed Rakich Masonry's notice of contest for its failure either to file an answer to the Secretary's complaint or respond to the judge's subsequent show cause order. In his order dismissing the case, the judge also affirmed the serious citation and proposed penalties totaling \$3,000.

On November 30, 2006, however, the judge received a letter from the owner of Rakich Masonry, Drago Rakich, appearing pro Se, which the Commission treated as a petition for discretionary review. In his letter, Mr. Rakich explains that he does not intend to cause delay and has not abandoned his case but describes his difficulty in receiving mail due to his incarceration in the Rockwall (Texas) County Jail since August 2006 on unrelated charges. Mr. Rakich's only proof of incarceration is a blank form from the Rockwall County Jail entitled "Inmate Worker (Trusty) Request Form." We also note that the judge's show cause order, sent via certified mail, was returned to the Commission unopened with the unsigned return-receipt card on November 13, 2006.

Based on Mr. Rakich's letter, the alleged circumstances may represent a "sufficient" reason for Rakich Masonry's failure to file an answer or respond to the show

cause order under Commission Rule of Procedure 101(b), 29 C.F.R. § 2200.101(b).
However, the Commission has not been presented with a sufficient factual record to make
such a decision.

Accordingly, we set aside the judge's order of dismissal and remand for further
proceedings consistent with this order.

SO ORDERED.

 /s/
W. Scott Railton
Chairman

 /s/
Thomasina V. Rogers
Commissioner

 /s/
Horace A. Thompson
Commissioner

Date: January 12, 2007

Secretary of Labor,

Complainant,

V.

RAKICH MASONRY

Respondent.

OSHRC DOCKET NO. 06-1159

ORDER

On 10/10/06 the undersigned issued an ORDER TO SHOW CAUSE to the Respondent as to why his Notice of Contest should not be dismissed for failure to file an answer to the complaint as required by the Commission Rules of Procedure. The Respondent failed to reply to the ORDER. His actions demonstrate either that he has abandoned the case or treats the Rules of Procedure of the Commission with disdain. This cannot be countenanced as it seriously impedes the administration of justice.

Accordingly, the Notice of Contest filed by the Respondent is dismissed. The Secretary's citation(s) and proposed penalties are AFFIRMED in all respects.

/s/
IRVING SOMMER
Chief Judge

DATE: November 24, 2006

Washington, D.C.