

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.

STERLING TECHNOLOGIES, INC.,
and its successors,

Respondent.

OSHRC Docket No. 15-1772

APPEARANCES:

Michael P. Doyle, Regional Counsel; Oscar L. Hampton III, Regional Solicitor; M. Patricia Smith, Solicitor; U.S. Department of Labor, Washington, DC and Philadelphia, PA

For the Complainant

Dean W. Viehl; Lake City, PA

For the Respondent

DIRECTION FOR REVIEW AND REMAND ORDER

Before: ATTWOOD, Chairman and MACDOUGALL, Commissioner.

BY THE COMMISSION:

An order issued by Chief Administrative Law Judge Covette Rooney approving an informal settlement agreement between Sterling Technologies, Inc. and the Secretary became a final order of the Commission on December 30, 2015. For the reasons that follow, we set aside the final order under Federal Rule of Civil Procedure 60(a), direct review of the case, and remand it to the judge for further proceedings.

The Occupational Safety and Health Administration issued Sterling a serious citation that included two items. The parties' informal settlement agreement submitted to the judge for approval resolved only one of the citation items and, according to its terms, left the other citation

item “contested pending forty-five (45) day extension for further settlement agreement discussions.” See Commission Rule 100(b), 29 C.F.R. § 2200.100(b) (requiring that settlement agreement specify the terms for each contested item and “specify any contested item . . . that remains to be decided”). Because the agreement did not fully resolve the case, the judge’s order approving the informal settlement agreement did not constitute a “final disposition of the proceedings” under Commission Rule 90(a), 29 C.F.R. § 2200.90(a). Nonetheless, the order was submitted for docketing and subsequently docketed on November 30, 2015, thereby commencing the thirty-day period before “[t]he report of the administrative law judge . . . become[s] the final order of the Commission.” 29 U.S.C. § 661(j) (“The report of the administrative law judge shall become the final order of the Commission within thirty days after such report by the administrative law judge, unless within such period any Commission member has directed that such report shall be reviewed by the Commission.”); 29 C.F.R. § 2200.90(b)(2) (“Promptly upon receipt of the Judge’s report, the Executive Secretary shall docket the report and notify all parties of the docketing date. The date of docketing of the Judge’s report is the date that the Judge’s report is made for purposes of section 12(j) of the Act, 29 U.S.C. § 661(j).”).

On December 23, 2015, one week before the final order date, the parties filed with the Commission a joint motion for relief under Commission Rule 90(b)(3), 29 C.F.R. § 2200.90(b)(3), which seeks to replace the informal settlement agreement with an “Amended Settlement Agreement” that resolves both citation items and their respective penalties. A ruling, however, was not issued on the motion prior to the December 30, 2015 final order date. Under the circumstances, we find it appropriate to grant relief from the final order under Federal Rule of Civil Procedure 60(a), which permits the Commission “on its own” to “correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record.” See *Robert Lewis Rosen Assocs., Ltd. v. Webb*, 473 F.3d 498, 505 & n.12 (2d Cir. 2007) (judgment corrected pursuant to Federal Rule of Civil Procedure 60(a) “because the plain language of the rule indicates that a judge may correct a judgment thereunder *sua sponte*,” allowing district court to award additional sums contemplated, but not specifically mentioned, in arbitrator’s award that court previously confirmed in full). Here, the mistake arose from the judge’s “oversight” in submitting her order for docketing even though the approved

informal settlement agreement did not resolve all of the citation items at issue.¹ *See Pettey Oil Fields Serv. Inc.*, 21 BNA OSHC 1638 (No. 05-1039, 2006) (directing case for review during thirty-day period because decision did not satisfy Commission Rule 90(a), and remanding for resolution of outstanding issues); *see also Structural Grouting Sys. Excavating, Inc.*, 21 BNA OSHC 1067, 1068-69 (No. 03-1913, 2005) (granting relief under Federal Rule of Civil Procedure 60(a)).

We thus set aside the final order under Federal Rule of Civil Procedure 60(a) and remand for the judge to consider the parties' amended settlement agreement pursuant to Commission Rule 100, 29 C.F.R. § 2200.100.

SO ORDERED.

/s/ _____
Cynthia L. Attwood
Chairman

/s/ _____
Heather L. MacDougall
Commissioner

Dated: January 27, 2016

¹

We note that in submitting the informal settlement agreement for the judge's approval, the Secretary represented in his attached proposed approval order, which the judge signed, that "all matters in dispute [had] been amicably resolved." Under Commission Rule 90(b)(3), an error of this nature can be corrected by the judge prior to the final order date. 29 C.F.R. § 2200.93(b)(3) ("Until the Judge's report has been directed for review or, in the absence of a direction for review, until the decision has become a final order, the Judge may correct clerical errors and errors arising through oversight or inadvertence in decisions, orders or other parts of the record.").

