



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.

ADAM ZEMBRZUSKI dba
A TO Z CONSTRUCTION,

Respondent.

OSHRC Docket No. 16-1151

APPEARANCES:

Suzanne F. Dunne, Attorney; Christine Z. Heri, Regional Solicitor; Katherine E. Bissell,
Deputy Solicitor for Regional Enforcement; U.S. Department of Labor, Washington, DC
For the Complainant

Adam Zembrzuski, pro se, Wheeling, IL
For the Respondent

REMAND ORDER

Before: MACDOUGALL, Acting Chairman; ATTWOOD, Commissioner.

BY THE COMMISSION:

On June 6, 2016, the Occupational Safety and Health Administration issued Respondent a three-item serious citation with a total proposed penalty of \$2,000, which Respondent contested. On August 11, 2016, Respondent notified the Secretary that he no longer wished to contest the citation and asked the Secretary for assistance in withdrawing his notice of contest.¹ On August 15, 2016, the Secretary filed a Notice of Withdrawal of Citation with Chief Administrative Law Judge Covette Rooney, who issued an order approving the withdrawal on October 21, 2016. The judge's order became a final order of the Commission on November 23, 2016.

¹ According to the Secretary, Respondent has paid the proposed penalty and abated the alleged violations.

Two months later, on January 27, 2017, the Secretary filed a motion seeking relief from the final order under Federal Rule of Civil Procedure 60(b)(1). Fed. R. Civ. Pro. 60(b)(1) (allows for relief from final judgment based upon “mistake, inadvertence, surprise, or excusable neglect”); *see also* 29 C.F.R. § 2200.2(b) (applicability of Federal Rules of Civil Procedure to Commission proceedings). According to the Secretary, he made a “good faith mistake” when he filed a Notice of Withdrawal of Citation instead of a Notice of Withdrawal of Notice of Contest. The Secretary’s motion, which was directed to the judge, requests that the final order “be lifted” and that he be allowed to file a Motion to Withdraw the Notice of Contest.²

We remand this case to the judge for consideration of the Secretary’s motion.

SO ORDERED.

/s/ _____
Heather L. MacDougall
Acting Chairman

/s/ _____
Cynthia L. Attwood
Commissioner

Dated: March 30, 2017

² We note that any withdrawal of Respondent’s notice of contest must be signed and filed by Respondent, not the Secretary. *See* 29 U.S.C. § 659(a) (employer must notify Secretary of intent to contest citation).

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THOMAS E. PEREZ, Secretary of Labor, United
States Department of Labor,

Complainant,
v.

ADAM ZEMBRZUSKI dba
A TO Z CONSTRUCTION
Respondent.

OSHRC Docket No.: 16-1151

Inspection No.: 1151034

ORDER APPROVING NOTICE OF WITHDRAWAL OF CITATION

The Commission has jurisdiction over the subject matter of the case and over the parties by virtue of the filing of a timely notice of contest.

The stipulated settlement between the parties filed on 8-15-16 has been considered. The stipulation and settlement agreement has been served on all parties and authorized employee representatives and posted in the manner prescribed by Commission Rule 7(g).¹ Ten (10) days has passed since service and posting and no objection to the settlement has been filed.

The settlement is approved under 5 U.S.C. §554(c)(1) and Commission Rule 100. The terms of the stipulated settlement are incorporated, in their entirety, by reference in this order.

¹Rules of Procedure of the Occupational Safety and Health Review Commission, 29 C.F.R. §§2200.1-.212, as amended.

The order shall become final thirty (30) days from the date of its docketing by the Executive Secretary, unless review thereof is directed by a Commission Member within that time. 29 U.S.C. Section 6610).

/s/

COVETTE ROONEYU
Chief Judge, OSHRC

Dated: **OCT 21 2016**
_____ **Washington, D.C.**