



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1825 K STREET N.W.
4TH FLOOR
WASHINGTON D.C. 20006-1246

FAX
COM (202) 634-4008
FTS 634-4008

SECRETARY OF LABOR,

Complainant,

v.

DAAK CORPORATION,

Respondent.


OSHRC Docket No. 92-386

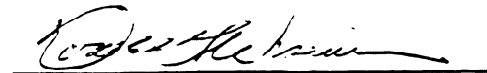
ORDER


In a Decision and Order dated December 15, 1992, Review Commission Chief Judge Irving Sommer granted a motion made by the Secretary for a default judgment against Daak Corp. for the company's failure to appear at the November 5, 1992 hearing in the case. The judge also, after taking evidence from the Secretary at the hearing, affirmed citations issued by the Secretary to Daak and assessed a total penalty of \$7,200.

By letter of December 2, 1992, William J. Klueber, vice president of Daak, appearing *pro se*, petitioned for review of the judge's actions, making certain factual allegations in support of his petition. Review was granted by Commissioner Montoya on January 19, 1993 for the Commission to consider whether Daak was entitled to reinstatement of the hearing.

We remand this case to Judge Sommer to resolve the factual allegations made by Daak and determine whether or not there is "good cause," under 29 C.F.R. § 2200.64(c), to excuse Daak's failure to appear at the hearing and, *if there is*, to reschedule the hearing.


Edwin G. Foulke, Jr.
Chairman


Donald G. Wiseman
Commissioner


Velma Montoya
Commissioner

Dated: February 4, 1993



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Respondent.

Docket No. 92-0386

NOTICE OF REMAND ORDER

The attached Remand Order by the Occupational Safety and Health Review Commission was issued on February 4, 1993. **ANY PERSON ADVERSELY AFFECTED OR AGGRIEVED WHO WISHES TO OBTAIN REVIEW OF THIS DECISION MUST FILE A NOTICE OF APPEAL WITH THE APPROPRIATE FEDERAL COURT OF APPEALS WITHIN 60 DAYS OF THE DATE OF THIS DECISION.** See Section 11 of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 660.

FOR THE COMMISSION

Ray H. Darling, Jr.
Executive Secretary

February 4, 1993
Date

NOTICE IS GIVEN TO THE FOLLOWING:

Daniel J. Mick, Esq.
Counsel for Regional Trial Litigation
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Ave., N.W.
Washington, D.C. 20210

Patricia Rodenhause, Esq.
Regional Solicitor
Office of the Solicitor, U.S. DOL
201 Varick St., Room 707
New York, NY 10014

Douglas Klueber, President
William J. Klueber, Vice-President
Daak Corporation
80 Milltown Road
Union, NJ 07083

Irving Sommer
Administrative Law Judge
Occupational Safety and Health
Review Commission
Room 417B
1825 K Street, N.W.
Washington, D.C. 20006-1246



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Docket No. 92-0386

Appearances:

Evan Barouh, Esq.
U.S. Department of Labor
New York, New York
For Complainant

Before: Administrative Law Judge Irving Sommer

DECISION AND ORDER

By a duly issued Notice of Hearing issued on October 19, 1992, Respondent was notified that the hearing in this matter was scheduled to take place on November 5, 1992 in Courtroom 208, U.S. Tax Court, 26 Federal Plaza, New York, New York. Respondent failed to appear at the scheduled hearing or to offer any reason for its failure to appear.

Complainant appeared and presented evidence concerning the alleged violations and the penalties assessed. Complainant moved for a default judgement and submitted that it had proved a prima facie case of the violations alleged. Based on the evidence of record, I find that the complainant has proved its case, and its motion for a default is granted. It is found as fact that Respondent was in violation of the Act as alleged in the complaint.

Respondent is thus found to have been in violation of 29 CFR 1926.20(b)(1); 29 CFR 1926.100(a)(1); 29 CFR 1926.105(a); 29 CFR 1926.152(a)(1); 29 CFR 1926.500(b)(1); 29 CFR 1926.500(b)(2); 29 CFR 1926.500(d)(1); 29 CFR 1926.1051(a); 29 CFR 1926.1053(b)(1); 29 CFR 1926.1060(a); 29 CFR 1903.2(a)(1); 29 CFR 1926.59(e)(1); 29 CFR 1926.59(g)(1); 29 CFR 1926.59(h).

The following penalties are found to be appropriate:

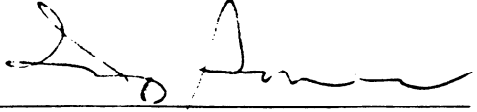
Citation no. 1, item 1, \$750; Citation no. 1, item 2, \$450; Citation no. 1, item 3, \$1500, Citation no. 1, item 4, \$ 600; Citation no. 1, item 5, \$750; Citation no. 1, item 6, \$450; Citation no. 1, item 7, \$1050; Citation no. 1, item 8, \$450; Citation no. 1, item 9, \$450; Citation no. 1, item 10, \$450; Citation no. 2, item 1, \$300; Citation no. 2, item 2, \$-0-; Citation no. 2, item 3, \$-0-; Citation no. 2, item 4, \$-0-. The total penalties assessed is \$7200.

FINDINGS OF FACT

All findings of fact necessary for a determination of all relevant issues have been made. Fed. R. Civ. P. 52(a). All proposed findings of fact and conclusions of law inconsistent with this decision are hereby denied.

CONCLUSIONS OF LAW

1. Respondent was, at all times pertinent hereto, an employer within the meaning of Section 3(5) of the Occupational Safety and Health Act of 1970, 29 U.S.C. Sections 651-678, 1970).
2. The Occupational Safety and Health Review Commission has jurisdiction over the parties and the subject matter.
3. The citations issued to the Respondent on or about December 17, 1991, are AFFIRMED in their entirety. Civil penalties of \$7200 are ASSESSED therefor.



IRVING SOMMER
Judge

DATED: DEC 15 1991
Washington, D.C.



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OSHRC DOCKET
NO. 92-0386

NOTICE OF DOCKETING
OF ADMINISTRATIVE LAW JUDGE'S DECISION

The Administrative Law Judge's Report in the above referenced case was docketed with the Commission on December 17, 1992. The decision of the Judge will become a final order of the Commission on January 19, 1993 unless a Commission member directs review of the decision on or before that date. **ANY PARTY DESIRING REVIEW OF THE JUDGE'S DECISION BY THE COMMISSION MUST FILE A PETITION FOR DISCRETIONARY REVIEW.** Any such petition should be received by the Executive Secretary on or before January 6, 1993 in order to permit sufficient time for its review. See Commission Rule 91, 29 C.F.R. 2200.91.

All further pleadings or communications regarding this case shall be addressed to:

Executive Secretary
Occupational Safety and Health
Review Commission
1825 K St. N.W., Room 401
Washington, D.C. 20006-1246

Petitioning parties shall also mail a copy to:

Daniel J. Mick, Esq.
Counsel for Regional Trial Litigation
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Avenue, N.W.
Washington, D.C. 20210

If a Direction for Review is issued by the Commission, then the Counsel for Regional Trial Litigation will represent the Department of Labor. Any party having questions about review rights may contact the Commission's Executive Secretary or call (202) 634-7950.

FOR THE COMMISSION

Ray H. Darling, Jr.
Executive Secretary

Date: December 17, 1992

DOCKET NO. 92-0386

NOTICE IS GIVEN TO THE FOLLOWING:

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Counsel for Regional Trial Litigation
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Chief Administrative Law Judge
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