



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

One Lafayette Centre
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Washington, DC 20036-3419

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SECRETARY OF LABOR
Complainant,
v.
G. C. IRONWORKS
Respondent.

OSHRC DOCKET
NO. 94-3372

**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 May 23, 1995. The decision of the Judge will become a final order of the Commission on June 22, 1995 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 June 11, 1995 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
1120 20th St. N.W., Suite 980
Washington, D.C. 20036-3419

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) 606-5400.

FOR THE COMMISSION

Ray H. Darling, Jr.
Executive Secretary

Date: May 23, 1995

DOCKET NO. 94-3372

NOTICE IS GIVEN TO THE FOLLOWING:

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

Michael Creegan
Gold Coin Ironworks
55 N. Evarts Avenue
Elmsford, NY 10523

Irving Sommer
Chief Administrative Law Judge
Occupational Safety and Health
Review Commission
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|----------------------|---|--------------------|
| SECRETARY OF LABOR, | : | |
| | : | |
| Complainant, | : | |
| | : | |
| v. | : | Docket No. 94-3372 |
| | : | |
| GOLD COIN IRONWORKS, | : | |
| | : | |
| Respondent. | : | |

Appearances:

Luis A. Micheli, Esq.
 U.S. Dept. of Labor
 New York, N.Y.

No appearance by Respondent

BEFORE: Administrative Law Judge Irving Sommer

DECISION AND ORDER

The Respondent was issued a serious citation and a notification of penalty on October 4, 1994. A hearing was held in New York, N.Y. on April 11, 1995 concerning the motion of the Secretary dated January 24, 1995 to dismiss the Respondent's notice of contest as not being timely filed under the Act. The trial of the hearing was set down for 10 A.M. The Secretary appeared with his witness at the established time and there was no appearance by the Respondent. The hearing was held and the record closed at 10:30 A.M.

The Judge then proceeded to hold his next hearing, and during the course thereof Michael Creeger, the patron of Gold Coin arrived. His time of arrival was 11:20 A.M. His statement merely was that he was sorry to be late. The Secretary had long finished his case and he and his witnesses were gone and the record closed. Mr. Creeger was told he can submit by letter any statement he wishes the Judge to consider. To date, there have been no submissions and this case is now ready for decision.

Mr. Scott Schrilla, a compliance officer with the Occupational Safety and Health Administration testified that he had conducted an inspection of the Respondent and as a result had issued a citation and notice of proposed penalty on October 4, 1994. The citation was received by the Respondent on October 7, 1994, and the last day to contest the citation under the Act was October 31, 1994. Mr. Schrilla further testified that the Respondent had not filed a notice of contest on or before the due date, and had written on October 11, 1994 asking for an informal conference. Mr. Antonio Pietroluongo, the assistant area director for OSHA testified that pursuant to Respondent's request for an informal conference Respondent's office was contacted and given three dates for such informal conference, but that Gold Coin did not contact him until 10-15 days thereafter, at which time both parties were unable to get together. Mr Pietroluongo stated that accompanying the citation was literature setting forth the Respondent's rights and responsibilities under the Act.


The evidence of record fully demonstrates that the notice of contest herein was untimely filed, being filed by letter dated November 23, 1994 with the Review Commission. The citation "plainly state(s) the requirement to file a notice of contest within the prescribed time period." Roy Kay, 13 BNA OSHC 2021, 2022, 1987--90, CCH OSHD, par. 28,406

(No. 88-1748, 1949). Accord, Acrom Construction Services, 15 BNA OSHC 1123, 1126, 1991 CCH OSHD par. 29,393 (88-2291,1991). Furthermore, Respondent was fully advised of the fifteen day filing period in the accompanying "OSHA 3000" booklet which provides an "additional, straightforward explanation" of the need for a timely contest. See Keefe Earth Boring Co., 14 BNA OSHC 2187, 2190, 2192, 1991 CCH OSHD par 29,277 (No. 88-2521, 1991). What is present here is simply carelessness and negligence in not properly attending to important business matters. Such management inadequacy does not entitle it to relief pursuant to Rule 60 of the FRCP under these circumstances. The service by the Secretary complied with the Act, and the Respondent has not demonstrated that the Secretary's misconduct caused the late filing. There is therefore no basis for tolling the statutory time limitations under the equitable principles stated in Atlantic Marine, Inc. v. OSHRC, 524 f2d. 476(5 Cir. 1975) and followed in Keppel's, Inc., 7 BNA OSHC 1442.

Accordingly, the Secretary's motion to dismiss the notice of contest is GRANTED.

ORDER

The Citation and penalty issued to the Respondent on October 4, 1994 is AFFIRMED as issued.


IRVING SOMMER
Chief Judge

DATED: **MAY 23 1995.**
Washington, D.C.