



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3419

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SECRETARY OF LABOR
Complainant,
v.
CALVIN L. SISSON
Respondent.

OSHRC DOCKET
NO. 95-1041

**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 August 16, 1995. The decision of the Judge will become a final order of the Commission on September 15, 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 September 5, 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. A/SKA

Ray H. Darling, Jr.
Executive Secretary

Date: August 16, 1995

DOCKET NO. 95-1041

NOTICE IS GIVEN TO THE FOLLOWING:

Benjamin T. Chinni
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Penny L. Sisson
Calvin L. Sisson
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Nancy J. Spies
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SECRETARY OF LABOR,
Complainant,

v.

CALVIN L. SISSON,
Employee of Pipeline Development Co.,

OSHRC Docket No.: 95-1041-E

FINAL ORDER DISMISSING NOTICE OF CONTEST

On June 30, 1995, employee Calvin L. Sisson, contested the reasonableness of the dates by which the Secretary required his employer, Pipeline Development Co. (Pipeline), to abate violations set forth in Citation Nos. 1 and 2 issued on May 31, 1995. The case was assigned to the undersigned Judge on July 19, 1995.

The Secretary moves to dismiss the action. Mr. Sisson, through his representative Penny Sisson,¹ filed a detailed opposition to the motion. In addition, Mr. Sisson requests Simplified Proceedings.

Mr. Sisson purports to contest the abatement dates set out in the citations. However, it appears that his greater concern is OSHA's underlying decision not to assert additional violations as a result of its inspection of Pipeline. Mr. Sisson also objects to the fact that the case was settled by OSHA and Pipeline prior to a hearing on the issues. He requests that

¹ Penny Sisson has signed documents filed in this case under the title of "acting legal counsel" for Calvin Sisson. However, Ms. Sisson advises that she is not an attorney. Her correct designation is "representative," and were this case presently in a different posture she should comply with Commission's Rules 22(a) and 23 before continuing to act as a representative.

this administrative body require OSHA to re-investigate Pipeline and to make a determination different from the one it previously reached. The Commission has no power to order either result. Clearly, the Secretary has sole prosecutorial authority in this area. *Boise Cascade Corp.*, 14 BNA OSHC 1993 (No. 89-3087, 1991).

The Commission may only review the reasonableness of the abatement dates set by the Secretary in the two citations. Generally, the Secretary sets abatement dates which are sufficient to allow an employer to evaluate the violation, to formulate plans for its correction and to implement those plans. Citation No. 1 contains eight items; Citation No. 2 has two. The abatement dates set for items 5 through 8, Citation No. 1, are not in issue since the violations were "corrected during inspection." Items 1 through 4 relate to Pipeline's spray booth operation. The abatement dates set for items 1 and 4 were June 8 and June 6, 1995, respectively. In the June 22, 1995 informal settlement agreement reached by OSHA and Pipeline both dates were extended to June 27, 1995. Item 2 was set to be abated by June 6 and item 3 by July 3, 1995. The abatement date set for Citation No. 2, item 1, was July 3 and was June 18, 1995 for item 2. This latter date was also extended in the informal settlement agreement to June 27, 1995. All of the dates of the abatement schedule have now passed. There remains no active case or controversy which may be resolved in this proceeding. The action is now moot. *See Oil, Chem. & Atomic Workers Intl*, 16 BNA OSHC 1339, 1341, n. 8 (No. 91-3349, 1993).

Mr. Sisson's final argument does not require a different result. He contends that the case cannot be considered moot since the injury and illness report, in Mr. Sisson's opinion, has not been adequately corrected. The argument is misplaced. The reasonableness of the date set, rather than the adequacy of the abatement, is at issue in an employee's contest of abatement dates. *United Auto Workers, Local 588 (Ford Motor Co.) v. OSHRC*, 557 F.2d 607 (7th Cir. 1977); *Marshall v. Oil, Chem. & Atomic Workers Intl*, 647 F.2d 383 (3d Cir. 1981).

Since the case must be dismissed, it is unnecessary to address Mr. Sisson's motion for simplified proceedings. Accordingly, it is ORDERED:

1. The motion to dismiss is GRANTED.
2. The notice of contest of Calvin L. Sisson is DISMISSED as moot.
3. The abatement dates set in the citation, as amended by the informal settlement agreement, are affirmed.

4. The hearing previously scheduled for August 30, 1995, is hereby canceled.
Dated this 10th day of August, 1995.



NANCY J. SPIES
Judge