

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

SECRETARY OF LABOR,

Complainant,

v.

HENRY ZAVALA CONSTRUCTION,

Respondent.

OSHRC Docket No. 98-1974

DECISION AND ORDER ON MOTION FOR DEFAULT JUDGEMENT

On March 1, 1999, the Complainant filed her Motion for Default Judgement asserting that this case was designated for E-Z Trial; that on January 21, 1999, a telephonic conference was held between Complainant's counsel and Respondent's representative; that Respondent's representative agreed to mail to complainant's counsel the relevant portions of Respondent's fall protection program; that the documents were not received; that on February 4, 1999, the Complainant's counsel wrote to Respondent's representative again requesting the documents; that Complainant has not received a reply to her letter; that on February 22, 1999, the undersigned at the request of Complainant returned this matter to conventional proceedings; that on February 24, 1999, a second telephonic conference was held between Complainant's counsel and Respondent's representative; that the undersigned thereafter directed Respondent's representative to send to Complainant's counsel immediately by overnight mail, the relevant portions of Respondent's fall protection program; and that as of March 1, 1999, the Complainant's counsel has not received the documents and no reply has been filed.

DISCUSSION AND CONCLUSION

Rule 41(a) of the Commission's Rules of Practice, 29 C.F.R. 2200.41(a), as pertinent, provides:

Sanctions: When any party has failed to plead or otherwise proceed as provided by these rules or as required by the * * * Judge, he may be declared to be in default * * * (2) on motion of a party. Thereafter, the * * * Judge, in [his] discretion, may enter a decision against the defaulting party * * *.

In my opinion, Respondent's representative has engaged in a pattern of disregard for the pending proceeding. Counsel for the Complainant has been more than reasonable in her request, and the undersigned has extended the time to submit the identified documents as requested. Respondent's representative has not responded, and has offered no reason for not complying. *Philadelphia Construction Equipment Inc., 16 BNA OSHC 1128 (No.92-899, 1993).*

IT IS ORDERED that the Motion for Default Judgement is GRANTED.

IT IS FURTHER ORDERED that the Citation and Notification of penalty issued October 19, 1998, is affirmed in its entirety.

Dated:

G. Marvin Bober
Administrative Law Judge