



by letter dated July 10, 1996 stated, "Let me first apologize for not responding to the citation, but it was misplaced during our office move and when I received your second notice today I realized my negligence in responding."

### DISCUSSION

The record here plainly shows that Sebco notified the Secretary of its intent to contest the citation and penalties but did so after the expiration of the 15 working day period. The issue presented is whether the untimely filing may be excused under the circumstances. An otherwise untimely notice of contest may be accepted where the delay in filing was caused by deception on the part of the Secretary or by failure of the Secretary to follow proper procedures. An employer is also entitled to relief under Fed. R. Civ. P. 60(b)(1) if it demonstrates that the Commission's final order was entered as a result of "mistake, inadvertence, surprise, or excusable neglect" or under Rule 60(b)(6) for such mitigating circumstances as absence, illness, or a disability which prevents a party from protecting its interests. See *Branciforte Builders, Inc.*, 9 BNA OSHC 2113, 1981 CCH OSHD par. 25,591 (No. 80-1920,1981). Here, there is no contention and no showing that the Secretary acted improperly or that the factors mentioned in Rule 60(b)(6) are present. The Citation "plainly state(s) the requirement to file a notice of contest within the prescribed period. *Roy Kay*, 13 BNA OSHC 2021-2. Accord, *Acrom Construction Services*, 15 BNA OSHC 1123,1126. What is indicated here is neglect and poor business practices. The Respondent states that the citation was misplaced during a business move causing the late filing. The respondent has been in the general contracting and construction management business since 1989, and has a work force of between 5 and ten people. His front office consists of three people including a secretary. The misplacement of the citation and accompanying documents was due to nothing more than poor business practices and neglect on part of the respondent. Even during a management transition and move it was incumbent upon the respondent to maintain orderly procedures for handling its important mail. The Commission has held that employers whose improper business procedures has led to failure to file in a timely manner are not entitled to relief. See *Louisiana-Pacific Corp.*, 13 BNA OSHC 2020; *Stroudsburg Dyeing & Finishing Co.*, 13 BNA 2058. The office procedures of the respondent, a going business should provide for reliable, continuous mail scrutiny so that important document are not overlooked or misplaced. Simple negligence will not provide entitlement to relief. *E.K. Construction Co.*, 15 BNA OSHC 1165-6.

While I am sympathetic to the Respondent's plight, I have no alternative but to hold it responsible for failing to file in a timely manner. Sebco had clear notice of the need to contest within the 15 working day period. Its mistake was neither excusable nor justified by any misconduct or misleading on the part of the Secretary.

**ORDER**

The Secretary's motion to dismiss is granted, and the citation and notification of penalty is AFFIRMED in all respects.

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IRVING SOMMER  
Chief Judge

DATED:

Washington, D.C.