



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
 One Lafayette Centre
 1120 20th Street, N.W. — 9th Floor
 Washington, DC 20036-3419

FAX:
 COM (202) 606-5050
 FTS (202) 606-5050

SECRETARY OF LABOR,	:
	:
Complainant,	:
	:
v.	: OSHRC Docket No. 93-885
	:
ARDYCE CARLSON, M.D.,	:
	:
Respondent.	:

REMAND ORDER

BEFORE: FOULKE, Chairman, and MONTOYA, Commissioner.

BY THE COMMISSION:


By letter of August 14, 1993, Ardyce Carlson, M.D., acting *pro se*, requested relief from an order of the Chief Administrative Law Judge. The judge dismissed Dr. Carlson's notice of contest for failure to file an answer to the Secretary's complaint, and failure to respond to the judge's Order to Show Cause.


In his letter, Dr. Carlson states that "[a]n answer to the complaint was filed via certified mail and receipt received." He enclosed no receipt or copy thereof, however, and there is no answer in the Commission's file. Dr. Carlson also states that "[n]o order to show cause was received by myself." The address he gives on his letter is different from the one he gave on his notice of contest, which is where the Order to Show Cause was addressed. In further explanation, Dr. Carlson states, "I have unfortunately had to file for bankruptcy and close my practice. You should have received notification from my attorney." The Commission's file reveals no such notification.

The circumstances alleged in Dr. Carlson's letter may represent adequate grounds for relief from dismissal under Federal Rule of Civil Procedure 60(b). On the other hand, the

Commission has not been presented with a sufficient factual record upon which to base such a decision. The Commission therefore finds it appropriate to allow Dr. Carlson an opportunity to establish whether his notice of contest should be reinstated.

Accordingly, the Commission vacates the Chief Administrative Law Judge's order dated August 10, 1993. The Commission remands this case to the Chief Administrative Law Judge with instructions to develop an evidentiary record through affidavit(s) or other appropriate proceedings to allow Dr. Carlson to offer proof of the circumstances alleged in his letter.


Edwin G. Foulke, Jr.
Chairman


Velma Montoya
Commissioner

Dated: September 30, 1993

NOTICE OF ORDER

The attached Remand Order by the Occupational Safety and Health Review Commission was issued and served on the following on September 30, 1993.

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

James E. White, Esq.
Regional Solicitor
Office of the Solicitor, U.S. DOL
Suite 501
525 S. Griffin Street
Dallas, TX 75202

Ardyce Carlson, M.D.
3212 Concord, Suite C
Orange, TX 77630

Irving Sommer
Administrative Law Judge
Occupational Safety and Health
Review Commission
One Lafayette Centre
1120 20th Street, Suite 990
Washington, D.C. 20036-3419

FOR THE COMMISSION



Ray H. Darling, Jr.
Executive Secretary



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SECRETARY OF LABOR
Complainant,
v.
ARDYCE CARLSON, M.D.
Respondent.

OSHRC DOCKET
NO. 93-0885

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 12, 1993. The decision of the Judge will become a final order of the Commission on September 10, 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 September 1, 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
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: August 12, 1993

DOCKET NO. 93-0885

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

James E. White, Esq.
Regional Solicitor
Office of the Solicitor, U.S. DOL
525 Griffin Square Bldg., Suite 501
Griffin & Young Streets
Dallas, TX 75202

Ardyce Carlson, M.D.
3212 Concord, Suite C
Orange, TX 77630

Irving Sommer
Chief Administrative Law Judge
Occupational Safety and Health
Review Commission
One Lafayette Centre
1120 20th St. N.W., Suite 990
Washington, DC 20036 3419

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OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

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ARDYCE CARLSON, M.D., :
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ORDER

On June 22, 1993, the undersigned issued an ORDER TO SHOW CAUSE to the Respondent as to why his Notice of Contest should not be dismissed for failure to file an answer to the complaint as required by the Commission's Rules of Procedure. The Respondent failed to reply to the ORDER. His actions demonstrate either that he has abandoned the case or treats the Rules of Procedure of the Commission with disdain. This cannot be countenanced as it seriously impedes the administration of justice.

Accordingly, the Notice of Contest filed by the Respondent is dismissed. The Secretary's citation(s) and proposed penalties are AFFIRMED in all respects.



IRVING SOMMER
Judge, OSHRC

DATED: **AUG 10 1993**
Washington, D.C.