



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

TRUE VALUE COMPANY,

Respondent.

OSHRC Docket Nos. 16-0597

APPEARANCES:

Christine T. Eskilson, Counsel for Occupational Safety and Health; Michael D. Felsen, Regional Solicitor; Nicholas C. Geale, Acting Solicitor of Labor; U.S. Department of Labor, Washington, DC
For the Complainant

Mark A. Lies II; Seyfarth Shaw, LLP, Chicago, IL
For the Respondent

DIRECTION FOR REVIEW AND REMAND ORDER

Before: MACDOUGALL, Acting Chairman; and ATTWOOD, Commissioner.

BY THE COMMISSION:

An order issued by Administrative Law Judge Carol A. Baumerich approving a settlement agreement between True Value Company and the Secretary became a final order of the Commission on November 23, 2016. For the reasons that follow, we set aside the final order under Federal Rule of Civil Procedure 60(a), direct review of the case, and remand it to the judge for further proceedings.

The Occupational Safety and Health Administration issued True Value Company two serious citation items, each with a proposed penalty of \$4,000, for a total proposed penalty of \$8,000. The settlement agreement, submitted by the parties to the judge for approval on October 11, 2016, withdrew Citation 1, Item 1, but failed to address Citation 1, Item 2. Because the agreement did not fully resolve one of the citation items, the judge's order approving the

settlement agreement did not constitute a “final disposition of the proceedings” under Commission Rule 90(a), 29 C.F.R. § 2200.90(a). Nonetheless, the order was submitted for docketing and subsequently docketed on October 24, 2016, thereby commencing the thirty-day period before “[t]he report of the administrative law judge . . . become[s] the final order of the Commission.” 29 U.S.C. § 661(j); *see also* 29 C.F.R. § 2200.90(b)(2) (docketing of judge’s report by Executive Secretary). Because no Commissioner directed the case for review, the order became final on November 23, 2016.

On April 17, 2017, the Secretary filed with the Commission an Unopposed Motion for Clerical Correction of Stipulation and Settlement Agreement. The Secretary stated that the Regional Solicitor’s Office inadvertently failed to include in the Stipulation and Settlement Agreement the withdrawal of Citation 1, Item 2 and its proposed \$4,000 penalty. Although the motion notes that the judge’s order is a final order of the Commission, neither party has provided any legal authority for the Commission to exercise jurisdiction to correct the settlement agreement.¹ Despite this failure, we find it appropriate to grant relief from the final order under Federal Rule of Civil Procedure 60(a), which permits the Commission “on its own” to “correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record.” *See Robert Lewis Rosen Assoc., Ltd. v. Webb*, 473 F.3d 498, 505 & n.12 (2d Cir. 2007) (judgment corrected pursuant to Federal Rule of Civil Procedure 60(a) “[b]ecause the plain language of the rule indicate[d] that a judge may correct a judgment thereunder *sua sponte*,” allowing district court to award additional sums contemplated, but not specifically mentioned, in arbitrator’s award that court previously confirmed in full). Here, the mistake arose from the judge’s “oversight” in submitting her order for docketing even though the approved settlement agreement, as initially submitted by the parties, did not resolve all the citations at issue.

¹ We note that this is the third time in less than a year in which the Commission has been compelled to address a final order involving a mistake regarding a settlement agreement. *See Caldwell Coating, LLC*, 26 BNA OSHC 1268, 1269 (No. 15-1216, 2017) (consolidated) (granting relief under Federal Rule of Civil Procedure 60(a) and setting aside final order approving settlement agreement that did not fully resolve case); *Sterling Techs., Inc.*, 25 BNA OSHC 1891, 1892 (No. 15-1772, 2016) (same). Parties and their counsel are reminded that they should carefully review all pleadings and other documents; motions shall provide the grounds for the relief sought. *See* Commission Rule 40(a), 29 C.F.R. § 2200.40(a) (Motions and requests, how to make).

We thus set aside the final order under Federal Rule of Civil Procedure 60(a) and remand the case to the judge to consider the Secretary's unopposed motion to correct the parties' settlement agreement.

SO ORDERED.

/s/

Heather L. MacDougall
Acting Chairman

/s/

Cynthia L. Attwood
Commissioner

Dated: April 27, 2017

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OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR, *
United States Department of Labor, *

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v. *

TRUE VALUE COMPANY, *

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DOCKET No. 16-0597

REGION I

INSPECTION No. 1112726

ORDER APPROVING SETTLEMENT

The Commission has jurisdiction over the subject matter of the case and over the parties by virtue of the filing of a notice of contest.

The executed Stipulation executed and filed by the parties on October 11, 2016, has been considered. The Stipulation has been served on all parties and authorized employee representatives and posted in the manner prescribed by Commission Rule 7(g)¹. Ten (10) days have passed since service and posting and no objection to the Settlement Agreement has been filed.

The resolution of this matter is approved under 5 U.S.C. §554(c)(1) and Commission Rule 100. The terms of the Stipulation are incorporated, in their entirety, by reference in this order. The order shall become final thirty (30) days from the date of its docketing by the Executive Secretary, unless review thereof is directed by a Commission Member within that time. 29 U.S.C. Section 661(j).

/s/
Honorable Carol Baumerich
JUDGE, OSHRC

Dated: _OCT 21, 2016

Washington, D.C.

¹ Rules of Procedure of the Occupational Safety and Health Review Commission, 29 C.F.R. §§2200.1-.212, as amended, 55 Fed. Reg. 22780-4 (June 4, 1990).