



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.

OSHRC Docket No. 06-1502

QUALITY BORING CO.

Respondent.

APPEARANCES:

William Everhart, Regional Solicitor; Amy Sanders Hairston, Attorney; U.S. Department of Labor, Dallas, TX

For the Complainant

Tilden Barnes, North Little Rock, AR

For the Respondent

REMAND ORDER

In an order dated December 11, 2006, Chief Administrative Law Judge Irving Sommer dismissed Quality Boring's notice of contest for its failure to file an answer to the Secretary's complaint or respond to the judge's subsequent Order to Show Cause. The Order to Show Cause had been marked unclaimed and returned by the Postal Service on November 25, 2006. In his order, the judge also affirmed the citations and proposed penalties totaling \$7,050.

On January 10, 2007, the Commission's Executive Secretary received a fax from Quality Boring signed by Tilden Barnes, Manager. The fax included a letter in which Mr. Barnes explained some of the circumstances of the case as well as a copy of Respondent's notice of contest and its response to a settlement proposal from the Secretary.

Based on Mr. Barnes's fax, which indicates that Quality Boring has not abandoned the case, and the unclaimed Order to Show Cause, we believe that Quality Boring should be afforded an opportunity to explain whether it had a "sufficient" reason under Commission Rule of Procedure 101(b), 29 C.F.R. § 2200.101(b) for its failure to file its answer.

Accordingly, we set aside the judge's dismissal and remand this case to him for further proceedings.

SO ORDERED.

/s/ _____
W. Scott Railton
Chairman

/s/ _____
Thomasina V. Rogers
Commissioner

/s/ _____
Horace A. Thompson
Commissioner

Date: January 16, 2007

Secretary of Labor,

Complainant,

V.

QUALITY BORING CO.,

Respondent.

OSHRC DOCKET NO. 06-1502

ORDER

On **11/6/06** 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 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.

DATE: December 11, 2006

/s/

IRVING SOMMER

Chief Judge

Washington, D.C.