



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

SECRETARY OF LABOR,

Complainant,

v.

ASPEN PRODUCTS, INC.,

Respondent.

OSHRC Docket Nos. 17-0312  
17-0313  
(CONSOLIDATED)

**APPEARANCES:**

Nicholas C. Geale, Acting Solicitor of Labor; Stanley E. Keen, Regional Solicitor; Karen E. Mock, OSHA Counsel; Monica R. Moukalif, Trial Attorney; U.S. Department of Labor, Office of the Solicitor, Atlanta, GA  
For the Complainant

Christopher J. Sherman; Payne & Jones, Chartered, Overland Park, KS  
For the Respondent

**DIRECTION FOR REVIEW AND REMAND ORDER**

Before: MACDOUGALL, Chairman; ATTWOOD and SULLIVAN, Commissioners.

**BY THE COMMISSION:**

An order issued by Administrative Law Judge John B. Gatto approving a settlement agreement between Respondent and the Secretary was docketed on October 10, 2017. On October 30, 2017, the Secretary filed a motion requesting leave to correct a “typographical error” in the settlement agreement. According to the Secretary, the parties intended to combine two violations into one grouped item, and to substitute one violation for a new violation, but due to a typographical error, the settlement agreement combined the wrong violations and made the wrong substitution. The Secretary also asserts that he has been unable to reach Respondent’s counsel to obtain a response to the motion and that he believes opposing counsel is on vacation. *See* Commission Rule 40(a), 29 C.F.R. § 2200.40(a) (requiring moving party to confer with other party prior to filing motion and to state if the party opposes the motion).

Commission Rule 90(b)(3), which the Secretary cites in support of his request, allows the judge—until the case is directed for review or the judge’s decision becomes a final order if not directed—to “correct clerical errors and errors arising through oversight or inadvertence in decisions, orders or other parts of the record.” 29 C.F.R. § 2200.90(b)(3). In this case, the judge’s order will become a final order on November 9, 2017, which is prior to the expiration of the ten-day period permitted under the Commission’s Rules for Respondent to file a response to the Secretary’s motion, unless the case is directed for review. *See* Commission Rule 40(c), 29 C.F.R. § 2200.40(c) (providing ten days from service of motion for party to file response); 29 U.S.C. § 661(j) (absent direction for review, judge’s decision becomes a final order of the Commission within 30 days).

In light of these alleged facts and circumstances, we direct the case for review and remand it to the judge to consider the Secretary’s motion.

SO ORDERED.

/s/  
Heather L. MacDougall  
Chairman

/s/  
Cynthia L. Attwood  
Commissioner

/s/  
James J. Sullivan, Jr.  
Commissioner

Dated: November 6, 2017



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**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
100 Alabama St. S.W  
Building 1924 Room 2R90  
Atlanta, GA 30303-314

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**FINAL CONSENT ORDER**

The parties have submitted a settlement agreement in the above-captioned case pursuant to Commission Rule 100. *See* 29 C.F.R. § 2200.100. The Court notes the time has expired for affected employees or authorized employee representatives to elect party status, or if party status has been elected, to file an objection to the reasonableness of any abatement time. *See* 29 C.F.R. § 2200.100(c). Accordingly,

**IT IS HEREBY ORDERED THAT** having examined the settlement agreement, said agreement is approved under 5 U.S.C. § 554(c)(1) and 29 C.F.R. § 2200.100(c), and is adopted and incorporated herein by reference as part of this Final Consent Order. The citation items are affirmed, modified, or vacated in accordance with the terms of the settlement agreement.

**SO ORDERED.**

/s/

**JOHN B. GATTO, Judge**

Dated: September 13, 2017  
Atlanta, GA