

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,

Complainant,

v.

JANUSZ SZYDLOWSKI d/b/a J HOME
IMPROVEMENT, INC.,

Respondent.

Docket No. 01-0980

Appearances:

Steven E. Walanka, Esq.
U.S. Department of Labor

For Complainant

Mr. Janusz Szydlowski, Pres.
J Home Improvement, Inc.

For Respondent

Before: Chief Judge Irving Sommer

DECISION AND ORDER

The citation setting forth the alleged violations and the accompanying notification of proposed penalty was issued by certified mail on April 17, 2000 and received by the Respondent on April 26, 2000. Pursuant to section 10 (a) of the Act, 29 U.S.C., sec.659 (a), Respondent was required to notify the Secretary of any intent to contest within 15 working days of receipt of the citation and notification of proposed penalty, or May 17, 2000. In the absence of a timely contest, the citation and proposed penalty would be deemed a final judgement of the Commission by operation of law. Section 10(a) of the Act. The Respondent did not file a notice of contest within the prescribed period, and its first notice was a letter sent directly to the Commission and received on June 5, 2001 requesting that the case be re-opened indicating he had not received notice that he ``could contest the case within 15 days."

DISCUSSION

The record clearly shows that the Respondent did not file a notice of contest within the 15 day contest period. Its first response was the letter to the Commission almost one year later. The record reveals that the citation and notification of penalty together with OSHA booklet 3000 which outlines Employer Rights and Responsibilities Following an OSHA Inspection was sent by certified mail to the Respondent and duly received. In his letter to the Commission received on June 5, 2001, Mr. Syzdlowski states, `` I did not received information that I could contest case within 15 days. I did not received by mail booklet OSHA 3000, so I did not now my rights and responsibilities." At the trial he admitted receiving the citation on April 26, 2000. The citation repeatedly admonishes that the 15-day deadline for contesting violation and/or penalties is critical. A paragraph captioned ``Right to Contest" states that (u)nless you inform the Area Director in writing that you intend to contest the citation(s) and/or proposed penalty(ies) within 15 working days after receipt, the citation(s) and the proposed penalty(ies) will become a final order of the Occupational Safety and Health Review Commission and may not be reviewed by any court or agency. The booklet OSHA 3000 which accompanied the citation similarly advises of the need to file a timely notice of contest. The record further shows that Mr. Syzdlowski was in the home improvement business for five years, employed at least 4 persons, and obviously carried on all necessary business procedures such as purchasing materials, obtaining new business and entering into contracts for work activity. He admits and showed in his testimony an ability to understand and speak English. While not alleging an inability to read, he intimates he could not. Previous to his home improvement business he was a truck driver for twenty years delivering packages. Both his positions undoubtedly required a reasonable ability to read in order to perform. If he could not read or understand the citation and accompanying brochure it was incumbent upon him to request assistance from his accountant or other persons. My impression of him at the trial leads me to believe that he testified in an intelligent manner, was fully capable of response to the questions and was able to conduct a business over a length of time, all pointing to sufficient intelligence and ability to successfully read and understand the documents sent to him or to get help with them. The Commission has held that a business must have orderly procedures for the handling of important documents and that the onus is upon the employer to have the necessary steps taken to see that OSHA matters are handled properly. If as alleged, a businessman such as herein does not fully comprehend the important documents forwarded by a governmental agency, he is obliged to have the citation, etc. which he acknowledges receiving

fully explained to him. It is clear that the untimely filing herein was due to negligent handling of the citation by the Respondent. Respondent had clear notice of the need to contest within 15 days. Its mistake was neither excusable nor justified by any misconduct or misleading on the part of the Secretary. The motion by the Secretary to dismiss is GRANTED, the notice of contest is dismissed, and the citation and notification of penalty is AFFIRMED in all respects.
SO ORDERED.

/s/
IRVING SOMMER
Chief Judge

DATED: 15 OCT 2001
Washington, D.C.