



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3419

SECRETARY OF LABOR
Complainant,

v.

TAYLOR ROOFING AND SHEET METAL, INC.
Respondent.

Phone: (202) 606-5100

Fax: (202) 606-5050

OSHRC DOCKET
NO. 95-1175

**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 January 19, 1996. The decision of the Judge will become a final order of the Commission on February 20, 1996 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 February 8, 1996 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:

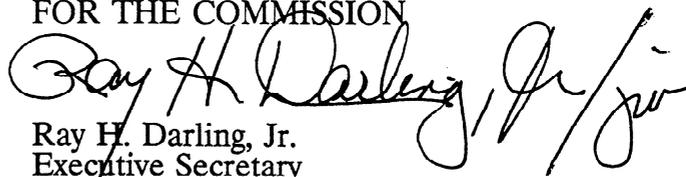
Executive Secretary
Occupational Safety and Health
Review Commission
1120 20th St. N.W., Suite 980
Washington, D.C. 20036-3419

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: January 19, 1996

DOCKET NO. 95-1175

NOTICE IS GIVEN TO THE FOLLOWING:

Patricia Rodenhausen, Esq.
Regional Solicitor
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Robert W. Taylor, President
Taylor Roofing and Sheet Metal
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Brick, NJ 08724

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

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UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,

Complainant,

v.

TAYLOR ROOFING & SHEET
METAL, INC.

Respondent.

Docket No. 95-1175

APPEARANCES:

Luis A. Micheli, ESQ.
Ms. Sabina Rezza
U.S. Department of Labor
New York, N.Y.
For the Complainant

Robert Taylor, President
Taylor Roofing and Sheet Metal, Inc.
Brick, N.J.
For the Respondent

Before: Chief Judge Irving Sommer

DECISION AND ORDER

This is a proceeding under section 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. section 651-678(the Act), to determine whether Respondent, Taylor Roofing & Sheet Metal, Inc. ("Taylor") filed a timely notice of contest of the citations and penalties proposed by the Secretary for alleged violations of the Act. A hearing was held on the Secretary's motion to dismiss Taylor's notice of contest.

BACKGROUND

The citations setting forth the alleged violations and the accompanying notification of proposed penalty were issued by certified mail on June 14, 1995. Taylor received these documents on June 19, 1995. Pursuant to section 10(a) of the Act, 29 U.S.C. section 659(a), Taylor was required to notify the Secretary of any intent to contest within 15 working days of receipt of the citations and notification of proposed penalty, or July 11, 1995. In the absence of a timely contest, the citations and proposed penalties would be deemed a final judgment of the Commission by operation of law. Section 10(a).

In a letter dated July 18, 1995 to the Commission Taylor stated `` We are appealing the commission to Docket our case."

DISCUSSION

The record here plainly shows that Taylor notified the Secretary of its intent to contest the citations and the penalties but did so after the expiration of the statutory 15-working-day period. The issue presented is whether that untimely filing may be excused under the circumstances. An otherwise untimely notice of contest may be accepted where the delay in filing was caused by deception on the part of the Secretary or by failure of the Secretary to follow proper procedures. An employer is also entitled to relief under Fed. R. Civ. P. 60(b)(1) if it demonstrates that the Commission's final order was entered as a result of ``mistake, inadvertence, surprise, or excusable neglect" or under Rule 60(b)(6) for such mitigating circumstances as absence, illness, or a disability which prevents a party from protecting its interests. *Branciforte Builders, Inc.*, 9 BNA OSHC 2113, 1981 CCH OSHD par. 25,591 (No. 80-1920, 1981). Here, there is no contention and no showing that the Secretary acted improperly or that the factors mentioned in Rule 60(b)(6) are present. The citation "plainly state(s) the requirement to file a notice of contest within the prescribed time period." *Roy Kay*, 13 BNA

OSHC 2021,2022. Accord, Acrom Construction Services, 15 BNA OSHC 1123,1126. What is indicated here is neglect and poor business practices on the part of the Respondent. The wife of the president received the certified mail from OSHA with the citations and explanatory booklet outlining his rights and responsibilities but the president did not follow up and obtain the mailings in time. In effect, he allowed important business mail to go unopened and unheeded. The Commission has held that employers whose improper business procedures has led to failure to file in a timely manner are not entitled to relief. See *Louisiana-Pacific Corp.*, 13 BNA OSHC 2020; *Stroudsburg Dyeing & Finishing Co.*, 13 BNA OSHC 2058. The office procedures of the Respondent, a going business should provide for reliable, continuous mail scrutiny. Simple negligence will not provide entitlement to relief. *E.K. Construction Co.*, 15 BNA OSHC 1165-6.

While I am sympathetic to the Respondent's plight, I have no alternative but to hold it responsible for failing to file in a timely manner as required.

ORDER

The Secretary's motion to dismiss is granted, and the citations and notification of proposed penalties are **AFFIRMED** in all respects.



IRVING SOMMER
Chief Judge

DATED: **DEC 19 1985**
Washington, D.C.