



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

Phone: (202) 606-5400  
Fax: (202) 606-5050

SECRETARY OF LABOR  
Complainant,  
v.  
JOCANSO, INC.  
Respondent.

OSHR DOCKET  
NO. 95-0349

**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 August 30, 1995. The decision of the Judge will become a final order of the Commission on September 29, 1995 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 September 19, 1995 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: August 30, 1995

DOCKET NO. 95-0349

NOTICE IS GIVEN TO THE FOLLOWING:

Patricia Rodenhausen, Esq.  
Regional Solicitor  
Office of the Solicitor, U.S. DOL  
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New York, NY 10014

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

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SECRETARY OF LABOR,  
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 Complainant,  
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 v.  
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 JOCANSO, INC.,  
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 Respondent.  
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Docket No. 95-0349

Appearances:

Stephen Dubnoff, Esq.  
 Ms. Sabina Rezza

Charles Fiore, Esq.  
 Lewis & Fiore, Esqs.

For the Secretary

For the Respondent

BEFORE: Chief Judge Irving Sommer

DECISION AND ORDER

The Secretary moved to dismiss the Respondent's notice of contest as not being timely filed under section 10 of the Act. A hearing was held in New York, N.Y. on May 31, 1995 concerning the merits of the motion at which time testimony and evidence were profert by both parties.

The Respondent was issued two citations and a notification of proposed penalty on October 13, 1994 which was received on October 28, 1994. Under section 10(a) of the Act, 29 U.S.C., an employer must notify the Secretary that it intends to contest the citation or proposed penalty within fifteen working days of its receipt. The Respondent had until November 22, 1994 to file its notice of contest, but did not do so, instead, the Respondent's attorney sent a letter to OSHA dated February 8, 1995 asking to contest the

citations stating that "Mr. Canizzaro has not been actively at work for the past few months due to some severe problems with his eyes which have required a number of surgical procedures and repeated doctors' appointments" and further alleging that the citations herein were not issued with "reasonable promptness" as required under the Act.

Mr. David Canizzaro, son of the company president and installation manager of the concern testified that his father had a cataract operation in October 1994 with resultant complications severely affecting his eyesight from October through December of 1994. He stated the citations were issued to an address at 135-14 Elder Avenue, Flushing, N.Y, the home address of his father, Anthony Canizarro, further stating the business address was in the adjoining house at 135-04. He testified that he did not recognize the signature on the card signed which acknowledged receipt of the citations and could have been signed by any number of his relatives located therein. Mr. Canizzaro admitted that "Both places were proper places to send mail addressed to Jocano. Both places."

His testimony reveals that in October 1994 at which time the citations were issued and signed for on delivery to the corporate address there were three clericals working therein, an office manager and two secretaries who kept records, paid bills and received mail. While I am sympathetic to the plight of the Respondent, it is apparent there is present no excusable neglect or mistake under Rule 60(b). What we have here is simple neglect and inefficient business procedures to cover receipt of important governmental mail and disposition thereof. There was a functioning clerical office that neglected its duties. The illness of Mr. Canizarro was not the factor in failure of the corporation to file a timely notice of contest, but poor business practices. The Commission has held that employers whose improper business procedures has led to failure to file on a timely basis 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 with 20 employees and a clerical staff should provide for reliable, continuous mail scrutiny. The reason advanced by the Respondent for its failure to file in a timely manner do not constitute "excusable neglect" or "any other reason for justifying relief" under Rule 60(b) of the Federal Rules of Civil Procedure. Simple negligence will not establish entitlement to relief. *E.K. Construction Co.*, 15 BNA OSHC 1165, 1166; *Rebco Steel Corp.*, 8 BNA OSHC 1235.

The timely filing of the notice of contest brings the case within the jurisdiction of the Commission. Other arguments such as alleged failure to issue the citations with "reasonable promptness" are not before me at this time. In any event, reasonable promptness means that "(a) citation will be vacated if delay has resulted in demonstrable prejudice to the employer." *Todd Shipyards Corp. v. Secretary of Labor*, 566 F2d 1327, 1330 (9th Cir. 1977). There is no evidence that the Respondent was prejudiced herein.

Accordingly, the motion of the Secretary to dismiss the notice of contest is GRANTED.

ORDER

The citations issued to the Respondent on October 13, 1994 and the proposed penalties are AFFIRMED in all respects.

A handwritten signature in black ink, appearing to read 'Irving Sommer', written over a horizontal line.

IRVING SOMMER  
Chief Judge

DATED: **AUG 29 1995**  
Washington, D.C.