



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
One Lafayette Centre
1120 20th Street, N.W. — 9th Floor
Washington, DC 20036-3419

PHONE:
COM (202) 606-5100
FTS (202) 606-5100

FAX:
COM (202) 606-5050
FTS (202) 606-5050

SECRETARY OF LABOR
Complainant,

v.

BEALL CONSTRUCTION, INC., D/B/A
TIGER MANUFACTURING,
Respondent.

OSHRC DOCKET
NOS. 93-0524
93-1498

**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 10, 1994. The decision of the Judge will become a final order of the Commission on September 9, 1994 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 August 30, 1994 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

Date: August 10, 1994

Ray H. Darling, Jr.
Executive Secretary

DOCKET NOS. 93-0524 & 93-1498

NOTICE IS GIVEN TO THE FOLLOWING:

Daniel J. Mick, Esq.
Counsel for Regional Trial Litigation
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Ave., N.W.
Washington, D.C. 20210

James E. White, Esq.
Regional Solicitor
Office of the Solicitor, U.S. DOL
525 Griffin Square Bldg., Suite 501
Griffin & Young Streets
Dallas, TX 75202

Nelson Quinn, Esq.
10440 North Central Expressway
Suite 750, Lock Box 704
Dallas, TX 75231

Stanley M. Schwartz
Administrative Law Judge
Occupational Safety and Health
Review Commission
Federal Building, Room 7B11
1100 Commerce Street
Dallas, TX 75242 0791

00103400859:06



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
ROOM 7B11, FEDERAL BUILDING
1100 COMMERCE STREET
DALLAS, TEXAS 75242-0791

PHONE:
COM (214) 767-5271
FTS (214) 767-5271

FAX:
COM (214) 767-0350
FTS (214) 767-0350

SECRETARY OF LABOR,

Complainant,

v.

BEALL CONSTRUCTION, INC., d/b/a
TIGER MANUFACTURING,

Respondent.

OSHRC DOCKET NOS. 93-0524
& 93-1498

APPEARANCES:

Ernest A. Burford, Esquire
Dallas, Texas
For the Complainant.

Nelson Quinn, Esquire
Dallas, Texas
For the Respondent.

Before: Administrative Law Judge Stanley M. Schwartz

DECISION AND ORDER

This is a proceeding before the Occupational Safety and Health Review Commission ("the Commission") pursuant to section 10 of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.* ("the Act"). The hearing in this matter was convened at 1:35 p.m. on June 28, 1994, after a thirty-minute settlement discussion which resulted in the Secretary and the Respondent settling all of the citation items in the cases referenced above. The undersigned determined that no additional persons desired to elect party status in this matter, and consolidated the cases for the purpose of issuing one order reflecting the agreement of the parties. The settlement terms are set out below.

Docket No. 93-0524

The Secretary agreed to withdraw serious citation number 1, which alleged a violation of 29 C.F.R. § 1910.252(a)(3)(i), and repeat citation number 2, which alleged a violation of 29 C.F.R. § 1910.106(b)(6), in exchange for Respondent's agreement to provide to the Secretary within sixty days a copy of its work rules addressing the issues relating to the alleged violations. Each party also agreed to bear its own expenses in this matter.

Docket No. 93-1498

The Secretary agreed to withdraw items 1a, 1b, 4 and 5b of serious citation number 1, which alleged, respectively, violations of 29 C.F.R. §§ 1910.94(a)(5)(iv), 1910.134(b)(1), 1910.252(b)(4)(iv) and 1910.304(f)(5)(v); the Secretary also agreed to withdraw "other" citation number 2, which alleged a violation of 1910.253(b)(5)(ii)(A). In return, Respondent agreed to withdraw its notice of contest as to items 1c, 2, 3, 5a and 5c of serious citation number 1, which alleged, respectively, violations of 29 C.F.R. §§ 1910.134(e)(5)(i), 1910.107(c)(6), 1910.244(b), 1910.303(b)(2) and 1910.305(b)(1). The parties agreed to a total penalty of \$1,000.00 in this matter, and also agreed that each party would bear its own expenses.

Conclusions of Law

1. Respondent, Beall Construction, Inc., d/b/a Tiger Manufacturing, is engaged in a business affecting commerce and has employees within the meaning of section 3(5) of the Act. The Commission has jurisdiction of the parties and of the subject matter of the proceeding.

2. Respondent was not in violation of 29 C.F.R. §§ 1910.94(a)(5)(iv), 1910.106(b)(6), 1910.134(b)(1), 1910.252(a)(3)(i), 1910.252(b)(4)(iv), 1910.253(b)(5)(ii)(A) and 1910.304(f)(5)(v).

3. Respondent was in serious violation of 29 C.F.R. §§ 1910.134(e)(5)(i), 1910.107(c)(6), 1910.244(b), 1910.303(b)(2) and 1910.305(b)(1).

Order

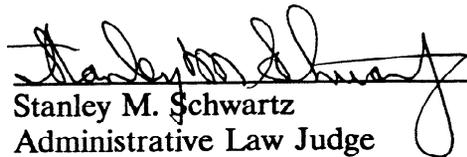
On the basis of the foregoing Findings of Fact and Conclusions of Law it is ORDERED that:

1. Serious citation number 1 and repeat citation number 2, docket number 93-0524, are VACATED.

2. Items 1a, 1b, 4 and 5b of serious citation number 1, docket number 93-1498, are VACATED.

3. Items 1c, 2, 3, 5a and 5c of serious citation number 1, docket number 93-1498, are AFFIRMED, and a total penalty of \$1,000.00 is assessed for these items.

4. "Other" citation number 2, docket number 93-1498, is VACATED.


Stanley M. Schwartz
Administrative Law Judge

Date: **AUG -2 1994**