



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
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SECRETARY OF LABOR
Complainant,
v.
UNITED SHEET METAL
Respondent.

OSHRC DOCKET
NO. 94-0833

**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 June 23, 1994. The decision of the Judge will become a final order of the Commission on July 25, 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 July 13, 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

Ray H. Darling, Jr.
Executive Secretary

Date: June 23, 1994

DOCKET NO. 94-0833

NOTICE IS GIVEN TO THE FOLLOWING:

Daniel J. Mick, Esq.
Counsel for Regional Trial Litigation
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Washington, D.C. 20210

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**Jimmie Roberts, Jr., Safety/EEO
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Capitol Heights, MD 20743

Irving Sommer
Chief Administrative Law Judge
Occupational Safety and Health
Review Commission
One Lafayette Centre
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UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,

Complainant,

v.

Docket No. 94-0833

UNITED SHEET METAL, INC.,

Respondent.

ORDER

The Secretary has moved to dismiss the Respondent's notice of contest as not being timely filed under Section 10 of the Act. The Respondent has filed a response in opposition to the Secretary's motion.

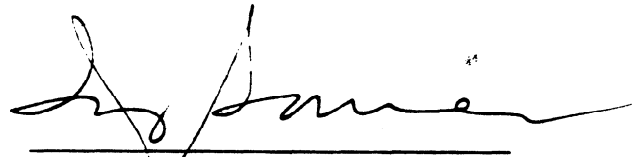
The record demonstrates that one citation was issued to the Respondent on January 14, 1994, and received on January 24, 1994. Under Section 10(a) of the Act, 29 U.S.C. 659(a), an employer must notify the Secretary that it intends to contest the citations or proposed penalties within fifteen(15) working days of its receipt. The Respondent had until February 14, 1994, to file its notice of contest, but did not do so, filing a letter dated February 24, 1994, and received by OSHA on February 28, 1994.

It is clear that the Respondent did not file a timely notice of contest in this case. The reasons given for said failure to file a timely contest do not constitute "excusable neglect" under Rule 60(b) of the Federal Rules of Civil Procedure. The Respondent admittedly did not file timely and has mistakenly interpreted the docketing of the case by the Commission's Executive Secretary as granting it a "waiver" to file a late notice of contest in this matter. This

interpretation is simply incorrect as the docketing of the case merely allows the parties in the case to file their positions prior to the Judge's ruling on the matter. The late filing was due to Respondent's own negligence.

There is no evidence that the delay in filing was caused by "the Secretary's deception or failure to follow proper procedures." Atlantic Marine, Inc. v. OSAHRC and Dunlop, 524 F2d 476 (5th Cir., 1975), nor is there any evidence that the Respondent is entitled to any relief under Rule 60 (b) of the Federal Rules of Civil Procedure.

Accordingly, the Secretary's motion to dismiss the Respondent's notice of contest is GRANTED. IT IS FURTHER ORDERED that the citation, penalties, and the abatement dates are AFFIRMED as issued.



IRVING SOMMER
Judge, OSHRC

DATED: JUN 20 1994
Washington, D.C.