SECRETARY OF LABOR, Complainant, v. NYNEX, Respondent.	OSHRC Docket No. 95-1671

DECISION

Before: ROGERS, Chairman, and VISSCHER, Commissioner.

BY THE COMMISSION:

At issue is whether relief from a final order should be granted to NYNEX under Federal Rule of Civil Procedure 60(b)(1).[1] That order resulted from NYNEX's failure to file a notice of contest ("NOC") within fifteen working days after a NYNEX employee received a certified mail citation and notice of proposed penalty issued to the company by the Secretary's Occupational Safety and Health Administration ("OSHA"). The citation and penalty are deemed a final order of the Commission if the employer fails to notify the Secretary, within fifteen working days after receiving the notice, that it intends to contest the citation and penalty. Section 10(a) of the Occupational Safety and Health Act ("the Act"), 29 U.S.C. § 659(a).[2] For the reasons that follow, we conclude that relief is not warranted.[3]

[1]That rule provides:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect.

[2]Section 10(a) states:

> If, after an inspection or investigation, the Secretary issues a citation

(continued...)

Following OSHA's inspection of NYNEX's Braintree, Massachusetts branch office, OSHA issued a citation and proposed penalty notice (hereinafter "citation") to the company by certified mail on August 4, 1995. The notice was addressed to "NYNEX" at its Braintree street address.[4]

Michael Carrigan, NYNEX's OSHA representative at Braintree, testified that at the closing conference with OSHA during the inspection, before the citation was issued, he had asked OSHA compliance officer ("CO") Jonathan MacLean to mail any citation to NYNEX management official Donna Thompson at the Braintree office. MacLean testified that he had no recollection of Carrigan making such a request, but he did not deny that Carrigan had

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[2](...continued)
under section 9(a) of this Act, he shall, within a reasonable time after the termination of such inspection or investigation, *notify the employer by certified mail* of the penalty, if any, proposed to be assessed under section 17 of this Act and that the employer has fifteen working days within which to notify the Secretary that he wishes to contest the citation or proposed assessment of penalty. *If, within fifteen working days from the receipt* of the notice issued by the Secretary *the employer fails to notify the Secretary* that he intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employee or representative of employees under subsection (c) of this section within such time, *the citation and the assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency*.

(Emphasis added.)

[3]At one time, the Commission considered holding oral argument concerning the issues in this case. Upon further consideration, we conclude that oral argument would not assist the Commission in deciding this case. Furthermore, no party has requested oral argument.

[4]The citation alleged a violation of the asbestos standard for construction at 29 C.F.R. § 1926.58(k)(2)(i), and it proposed a penalty of $1275.00. (The former § 1926.58 has been redesignated as § 1926.1101.) The specific charge was that NYNEX failed to properly label pipes that OSHA believed were wrapped with asbestos insulation.

done so. MacLean further testified that if an employer instructed him to send the citation to a particular person, his practice was to comply, and absent such instructions, the citation normally goes to the inspection site.

A part-time, substitute mail carrier delivered the mail to the Braintree Post Office during the period in question. It is not certain on what date he attempted delivery of the certified mail. However, the certified mail was not signed for at Braintree. Post Office records show that on Thursday, August 10, the Post Office forwarded the certified mail to a NYNEX branch office at 1166 Avenue of the Americas, New York, NY. There, a NYNEX clerical employee signed for it on August 14. Receipt of the notice was recorded in a log there the same day.[5] Under Post Office regulations, the customer decides whether to sign for certified mail or redirect it.

The next known action on the certified mail was on September 26, when OSHA compliance officer ("CO") Jonathan MacLean telephoned Michael Carrigan, NYNEX's OSHA representative at Braintree, concerning the citation. Carrigan was unaware of the citation. The CO then sent a copy of the relevant documents to Carrigan, who inquired about the citation at NYNEX's New York City office. NYNEX filed its notice of contest ("NOC") on October 6, 1995.

Jeanne Condon, the NYNEX employee who normally receives and routes incoming mail at NYNEX's Braintree office, testified that if she had received a letter from the "Occupational Safety and Health Commission" (presumably meaning OSHA), she would have given it to her supervisor, Mary Valentine. There was no testimony, however, regarding what procedures NYNEX had for processing mail at that New York City office. The Braintree office had a practice of forwarding to the New York office mail addressed

[5]The citation stated the requirement of section 10(a) that the employer file a notice of contest within 15 working days of receipt, or else the citation and penalty would be deemed a final order "and may not be reviewed by any court or agency."

specifically to "NYNEX Payroll" or "NYNEX CR&R" (Central Reports and Remittance). Those departments had moved from the Braintree facility to the New York office before the events in question here.

Upon receiving NYNEX's NOC, OSHA's area director wrote NYNEX's counsel, stating that the citation had become a final order of the Commission and that the area office "cannot modify this order." NYNEX then filed a motion with the Commission for Rule 60(b) relief from the final order.

Former Commission Administrative Law Judge Richard DeBenedetto denied the requested relief.[6] He found that August 14, when the clerical employee in New York City signed for the certified mail, was the triggering date for the NOC period, so that the period ended on September 6. He further found that NYNEX took no action regarding the citation until September 26, when MacLean contacted Carrigan about it. He found that that failure was mere carelessness and not grounds for relief under Rule 60(b)(1). He also found that:

> . . . NYNEX had sole control over its Mail Center at the Braintree facility where the certified mail was undoubtedly forwarded to its New York branch office. Such control carried with it a duty to exercise reasonable diligence in handling certified mail.
>
> The responsibility of misdirecting the citation from the Braintree office to New York must rest with NYNEX which certainly cannot claim relief from the fact that the misdirected mail languished in NYNEX's New York office for some six weeks before the subject was raised by OSHA during the course of its follow-up procedures.

DISCUSSION

[6]The judge initially denied NYNEX's motion for relief without a hearing, in his order of February 9, 1996. The Commission remanded the case by order of April 15, 1996, for taking of evidence as to the circumstances surrounding receipt of the citation. The judge again denied the motion following a factual hearing.

The judge applied the Commission's precedent that relief may be granted under the provisions of Rule 60(b) for noncompliance with the NOC period provided in section 10(a). *E.g., Jackson Assoc. of Nassau,* 16 BNA OSHC 1261, 1993-95 CCH OSHD ¶ 30,140 (No. 91-438, 1993).[7] The relevant portion of the rule here is subsection (1), which, as noted, permits discretionary relief from final orders that have been entered due to the party's "mistake, inadvertence, surprise, or excusable neglect." The U. S. Supreme Court has ruled on the meaning of "excusable neglect." *Pioneer Investment Serv. v. Brunswick Assoc. Lim. Part.*, 507 U.S. 380 (1993). Although *Pioneer* addressed that term in the context of a Bankruptcy Act Rule, the U. S. courts of appeals generally have held that the analysis in *Pioneer* applies to "excusable neglect" as used in other federal procedural rules. *E.g., Robb v. Norfolk & Western Ry. Co.*, 122 F.3d 354, 361-62 and n. 6 (7th Cir. 1997) (applying *Pioneer* analysis to Rule 60(b) and noting holdings in eleven other circuits that "excusable neglect" has broader meaning since *Pioneer* with respect to federal rules other than Bankruptcy Act rules). *See also Canfield v. Van Atta Buick/GMC Truck, Inc.*, 127 F.3d 248,

[7]The Secretary argues that Fed. R. Civ. P. 60(b) relief is not available for untimely NOC's, because section 10(a) is "in the nature of a statute of limitations," citing *Irwin v. Dept. of Veterans Affairs*, 498 U.S. 89 (1990), and the language of section 10(a) and 12(g) of the Act. She raised that argument for the first time in her brief on review. It was not included in the direction for review or the briefing notice. Ordinarily, the Commission does not decide issues that are not directed for review. 29 C.F.R. §§ 2200.92(a) and (c), 93(a). *See Tampa Shipyards, Inc.* 15 BNA OSHC 1533, 1535 n. 4, 1991-93 CCH OSHD ¶ 29,617, p. 40,097 n. 4 (No. 86-360, 1992). While Chairman Rogers believes the Secretary raises a substantial argument, for the reasons stated in *Northwest Conduit Corp.*, Docket No. 97-851 (September 30, 1999), she agrees that as a practical matter it is not necessary to address the Secretary's argument here. Both Commissioners agree with the judge that relief is not warranted here even under Rule 60(b). Rule 60(b) is a broader relief provision than equitable tolling or estoppel, which are the only grounds for relief the Secretary perceives as applicable to late notices of contest. *See Irwin*, 498 U.S. at 96 (relief not warranted under equitable tolling or estoppel for what is "at best a garden variety claim of excusable neglect."). As noted, Rule 60(b) permits relief for "excusable neglect."

250 (2d Cir. 1997) (*Pioneer* analysis applies to Rule 60(b)(1)), *cert. denied*, 522 U.S. 1117 (1998); *Pratt v. Philbrook*, 109 F.3d 18, 19-20 (1st Cir. 1997) (same). *Cf. Stutson v. United States*, 516 U.S. 193, 195-96 (1996) (Court perceived "at least a reasonable probability" that Eleventh Circuit on remand would reach result consistent with six other circuits, which hold that *Pioneer* standard applies to "excusable neglect" as used in Federal Rule of Appellate Procedure 4 concerning late-filed appeals).

Pioneer stated:

> With regard to [whether] a party's neglect of a deadline is excusable, . . . we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include, as the Court of Appeals found, the danger of prejudice to the [opposing party], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.

507 U.S. at 395 (footnote omitted).

Although the certified mail citation was not signed for at Braintree, it was received and signed for by an employee of NYNEX on August 14 at the New York City branch office, to which it had been redirected. Further, as the judge found, NYNEX was responsible for redirecting the citation to that office. It was NYNEX Braintree's practice to forward certain mail related to labor relations to that New York City office. Only a NYNEX employee would be able to give the Post Office that New York City address. The part-time, substitute mail carrier who brought the mail to the Braintree office during the period in question would hardly have redirected the certified mail to New York on his own authority, contrary to Post Office regulations. NYNEX did not file its NOC until October 6 -- more than 35 working days after the receipt of the citation in New York.

The burden of showing that Rule 60(b) relief should be granted under these circumstances is on the party seeking relief. *E.g., Craig Mechanical Inc.*, 16 BNA OSHC 1763, 1993-95 CCH OSHD ¶ 30,442 (No. 92-372, 1994), *aff'd without opinion*, 55 F.3d 633

(5th Cir. 1995). NYNEX, however, has not explained what happened to the citation after it was received and logged in at the New York City office, or what procedures the employer had at that office to ensure a timely response to important documents. The Commission expects employers to "maintain orderly procedures for handling important documents." *Louisiana-Pacific Corp.*, 13 BNA OSHC 2020, 1987-90 CCH OSHD ¶ 28,409 (No. 86-1266, 1989). "The Commission has consistently denied relief to employers whose procedures for handling documents were to blame for untimely filings" of NOC's. *E. K. Constr. Co.*, 15 BNA OSHC 1165, 1166, 1991-93 CCH OSHD ¶ 29,412, p. 39,637 (No. 90-2460, 1991). Because NYNEX did not even introduce evidence as to its procedures for handling important documents at its New York City office, we have no basis for determining whether the delay in filing was excusable. We therefore find that NYNEX has failed to show that its untimely filing of the NOC resulted from excusable neglect.

We also find that the delivery of the citation to NYNEX's New York City branch office did not fall short of the service requirements of the Act or otherwise deprive NYNEX of due process. Section 10(a) of the Act provides that the Secretary "shall notify the employer by *certified mail* of the penalty . . . ." In interpreting this provision, the Commission has upheld certified mail service of a citation where it was addressed to the company and was sent to the employer's post office address, where it was received by a low-level employee. *Stroudsburg Dyeing & Finishing Co.*, 13 BNA OSHC 2058, 1987-90 CCH OSHD ¶ 28,443 (No. 88-1830, 1989). The Commission also has approved certified mail service that is "accepted at the local worksite where a company employee is in charge." *Henry C. Beck Co.*, 8 BNA OSHC 1395, 1399, 1980 CCH OSHD ¶ 24,484, p. 29,905 (No. 11864, 1980).The service on NYNEX's New York City branch office meets this test.[8]

[8]As NYNEX notes, the Federal Rules of Civil Procedure generally require service on designated agents "in the United States district courts in all suits of a civil nature." Fed. R. (continued...)

NYNEX argues, however, that the service here was insufficient under principles of due process, citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). There, the Supreme Court faulted service by newspaper publication and held that due process requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.* at 314-15 (citations omitted). *See, e.g., Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983) (same). Applying due process principles to service of a citation on an employer, the Commission has stated that the test is "whether the service is reasonably calculated to provide an employer with knowledge of the citation and notification of proposed penalty and an opportunity to determine whether to abate or contest." *B. J. Hughes, Inc.*, 7 BNA OSHC 1471, 1474, 1979 CCH OSHD ¶ 23,675, pp. 28,707-08 (No. 76-2165, 1979). The Commission has been guided by that test subsequently. *E.g., Henry C. Beck*, 8 BNA OSHC at 1398-99, 1980 CCH OSHD at pp. 29,904-05.

Based on this record, the service on the New York City office here was sufficient, under due process principles, to trigger the 15-working-day NOC period. NYNEX bears the burden of showing a denial of due process, just as it does regarding the grounds for Rule

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[8](...continued)
Civ. P. 1. *E.g.*, Fed. R. Civ. P. 4(h)(1) (requirements for service on corporations and associations within the United States, of summons and complaint which commence suit "in the United States district courts in all suits of a civil nature"); 4(d) (new alternative procedure whereby plaintiff may send copy of complaint to corporation or association "through first-class mail or other reliable means" and request that defendant waive service of summons).

The notice requirements for certified mail service of OSHA citations are governed, however, not by the terms of the Fed. R. Civ. P., but by section 10(a), which provides a specific procedure for such service. *See Capital City Excavating Co. v. OSHRC*, 679 F.2d 105, 110 (6th Cir. 1982); *Joseph Weinstein Elec. Corp.*, 6 BNA OSHC 1344, 1346, 1978 CCH OSHD ¶ 22,526, p. 27,181 (No. 14839, 1978).

60(b) relief. It had a full opportunity to show what happened to the citation after it was received in New York City, and what procedures NYNEX had at that office to ensure that important mail would get a prompt response. It submitted no evidence on those issues. In the circumstances, we cannot find that NYNEX has established a denial of due process here.[9]

Thus, we affirm the judge's decision denying NYNEX relief from the final order based on its lack of a timely NOC. SO ORDERED.

/s/
Thomasina V. Rogers
Chairman

/s/
Gary L. Visscher
Commissioner

Dated: September 30, 1999

[9]NYNEX relies on the Third Circuit's holding that the certified mail notice must "be given to one who has the authority to disburse corporate funds to abate the alleged violation, pay the penalty, or contest the citation or proposed penalty." *Buckley & Co. v. Secy. of Labor*, 507 F.2d 78, 81 (3d Cir. 1975). The Commission has not followed *Buckley* on that point, however. *E.g., B. J. Hughes* (applying more flexible test mentioned above -- whether service in particular case was "reasonably calculated" to give proper notice to cited employer). The other circuit court which has ruled on the issue also has not followed *Buckley* on that point. *Capital City Excavating Co. v. OSHRC*, 679 F.2d 105, 110 (6th Cir. 1982) ("when a citation and notice of penalty is delivered to corporate headquarters by the statutory means and delivery is accepted by an agent of the corporation possessing authority to do so, there has been 'receipt' of the document within the meaning of 29 U.S.C. § 659(a).")

We decline to follow *Buckley* here. We further note that, unlike in *Buckley*, there is no indication here that anyone at the worksite where the citation was received had any reason to conceal the citation from NYNEX's management.

VISSCHER, Commissioner, concurring:

I join in the lead opinion, but would further emphasize the following in concluding that notice of the citation to NYNEX was not insufficient here.

In *Buckley & Co. v. Secretary of Labor*, 507 F.2d 78, 81 (3d Cir. 1975), the Third Circuit stated that it "perceive[d] the Congressional intent to be a requirement that notification must be given to one who has the authority to disburse corporate funds to abate the alleged violation, pay the penalty, or contest the citation or proposed penalty." The court further held that "[a]s to this corporate employer, this means, at the very least, a notice to the officials at the corporate headquarters, not the employee in charge at the particular worksite."

Subsequently, in *B.J. Hughes, Inc.*, 7 BNA OSHC 1471, 1474, 1979 CCH OSHD ¶ 23,675, p. 28,708 (No . 76-2165, 1979), the Commission disagreed with the Third Circuit to the extent that it would prohibit service on responsible individuals at a local worksite. The Commission allowed service of a citation and proposed penalty on the company's district superintendent, rather than requiring that it be sent to the corporate headquarters. The Commission said that "service upon an employee who will know to whom in the corporate hierarchy to forward the documents" would satisfy the statute.

In *Henry C. Beck Co.*, 8 BNA OSHC 1395, 1980 CCH OSHD ¶ 24,484 (No. 11864, 1980), the Commission took the additional step of allowing the citation and proposed penalty to be sent by certified mail to the local worksite in the name of the company, without sending it to the attention of the project manager or any other particular employee. The Commission found that the difference between service on *B.J. Hughes* and *Beck* was not significant, because it was a small worksite and the "[t]he Secretary could reasonably presume that a mailing addressed to the worksite would reach the project manager" who "could be expected to forward the documents to the appropriate official in the corporate hierarchy." *Id.* at 1938, 1980 CCH OSHD at p. 29,904.

In *Capital City Excavating Co. v. Donovan*, 679 F.2d 105, 110 n.4 (6th Cir. 1982), the Sixth Circuit agreed with the Third Circuit that "delivery to a work site is not sufficient and that delivery to such a location does not constitute receipt by a corporate employer." The

Sixth Circuit's rule is that "a notification to a corporate employer must be sent to corporate headquarters unless the employer has directed that it be sent to a different address."*Id.*

Here, the citation was mailed to NYNEX's local office in Braintree, as the employer had requested. The citations were not addressed, however, to the attention of a particular named individual as NYNEX had also requested. While service on an individual named by NYNEX to receive the citation at the local office would likely be sufficient, the same is not necessarily true where the citation is simply addressed to the company at the local office. This is particularly so where, as here, the company had specifically requested service on a named individual. We do not need to decide that in this case, however, because the citation was forwarded on to a NYNEX branch office in New York City, where it was signed for by a company employee. In my view, service of the citation on yet another NYNEX branch office would not ordinarily be sufficient. But, while the record is not entirely clear on this point, it appears that the certified mail was forwarded to the branch office in New York City, rather than to NYNEX's corporate headquarters, at the direction of a NYNEX employee in Braintree. Under those circumstances, I would not grant the relief requested.

/s/
Gary L. Visscher
Commissioner

Date: 9/30/99

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
John W. McCormack Post Office and Courthouse
Room 420
Boston, Massachusetts 02109-4501

SECRETARY OF LABOR, Complainant,	:	
v.	:	OSHRC Docket No. 95-1671
NYNEX, Respondent.	:	

ORDER ENTERED UPON
EMPLOYER'S REQUEST FOR RELIEF FROM
FINAL ORDER

On February 9, 1996, an order was entered, based upon the documents of record, denying NYNEX's motion for relief from an order or judgment under Rule 60(b)(1) of the Federal Rules of Civil Procedure which provides such relief for "mistake, inadvertence, surprise, or excusable neglect." NYNEX petitioned for review of the February 9, 1996, order, submitting an affidavit in support of its petition. The Commission concluded that the petition and affidavit raised issues that warranted a hearing. The case was thereupon remanded for the taking of evidence as to the circumstances surrounding NYNEX's receipt or nonreceipt of the citation.

At the hearing both sides called witness and presented documents establishing that NYNEX was issued a citation having an "Issuance Date" of August 4, 1995. The citation alleges serious violation of a health standard carrying a proposed penalty of $1,275, based upon an inspection of NYNEX's facility at 350 Granite Street, Braintree, Massachusetts. The citation and notification of penalty was sent by certified mail addressed to NYNEX at the 350 Granite Street place of business. It is undisputed that on August 10, 1995, the certified mail in question was forwarded by the Braintree post office to a NYNEX office at 1166 Avenue of the Americas in New York City (Exh.R-

2).[10] Nor is it disputed that the citation was received by NYNEX's New York office on August 14, 1995 (Tr. 5-6, 17, Exh. R-1), the date triggering the 15-working-day contest period which expired on September 6, 1995 (Tr.28).[11] No action was taken by NYNEX regarding the citation until after Michael Carrigan, who is employed by NYNEX in its environmental safety operations and who participated in the OSHA inspection, received a telephone call from the OSHA compliance officer on September 26, 1995, inquiring as to "what...NYNEX [was] going to do about the citation." This telephone conversation caused the compliance officer to telefax the citation documents to Carrigan who subsequently telephone NYNEX's New York facility regarding the delivery of the citation. Carrigan was informed that the certified mail from OSHA was logged in that office on August 14, 1995 (Tr. 26, 31). NYNEX filed its notice of contest on October 6, 1995.

NYNEX presented two witnesses, Jeanne Condon and Michael Carrigan. Condon testified that she was employed by NYNEX to handle the mail at the "Mail Center" located at 350 Granite Street in Braintree. She stated that in order to be admitted to the facility, the postman must knock on a window and wait for the door to be unlocked. She sorts and forwards the mail to the different departments, and signs for the certified mail. She would not forward to the New York office any mail addressed to NYNEX in Braintree unless it was address to "NYNEX Payroll" or NYNEX CR & R" (Central Reports and Remittance). Condon worked on August 10 when the mail in question was apparently delivered, but she could not recall the matter. She acknowledged that whenever the mail was delivered when she was away from her desk, there would be someone else to received the mail, and it "would be up to that individual" to decide where to direct the mail (Tr. 10-16).

The Secretary's witnesses included Michael Haggerty, acting manager of the Braintree post office, and Joseph Arsenault, a mail carrier for 29 years whose "regular" route since 1987 included the Granite Street NYNEX facility. Both witnesses testified that the forwarding of any certified mail is initiated only by the addressee (Tr. 41-43, 75-76). Arsenault stated that he himself would not

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[10]NYNEX's Granite Street facility housed a number of departments some of which were recently moved to New York City, including the Payroll and Central Reports and Remittance departments (Tr. 11-13, 77).

[11]Under section 10(a) of the OSH Act, 29 U.S.C. § 659(a), the employer is required to be notified by certified mail of the citation and penalty, and the employer is allowed fifteen working days from the receipt of the citation to contest the citation or proposed assessment of penalty. An uncontested citation is deemed a final order of the Commission and not subject to review by an court of agency.

change a mailing address unless there was a change of address form filed with the post office and there was no such record in this case. (Tr. 77).

NYNEX presents various contentions that are so tenuous that a detailed disposition of them is unnecessary. Summing up its position in its posthearing brief, at 12, NYNEX states:

> As a matter of fundamental fairness and equity, NYNEX is entitled to equitable relief in this matter. The Commission's policy to make employers responsible for their own internal procedures is understandable. Nevertheless, this policy should not be applied in this matter. Here NYNEX implemented the proper policies, and there is no evidence the NYNEX failed to follow its procedures. The evidence indicates that for unknown reasons the delivery of the Citation in question was irregular and unusual. This was not the fault of NYNEX....

NYNEX's position overlooks or ignores a critical element in this case, and that is the undisputed fact that NYNEX had sole control over its Mail Center at the Braintree facility where the certified mail was undoubtedly forwarded to its New York branch office. Such control carried with it a duty to exercise reasonable diligence in handling certified mail.

The responsibility of misdirecting the citation from the Braintree office to New York must rest with NYNEX which certainly cannot claim relief from the fact that the misdirected mail languished in NYNEX's New York office for some six weeks before the subject was raised by OSHA during the course of its follow-up procedures.

Carelessness is not a proper basis for proving relief under Fed. R. Civ. P. 60(b)(1). *Bershad v. McDonough,*469 F.2d 1333, 1337 (7th Cir. 1972). Accordingly, it is **ORDERED** that NYNEX's motion for Rule 60(b)(1) relief from the final order is **denied.**

/S/
RICHARD DeBenedetto
Judge, OSHRC

Dated: **May 30, 1997**
Boston, MA