



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
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Washington, DC 20036-3419

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SECRETARY OF LABOR
Complainant,

v.

CHERRY HILL TUNE & LUBE, INC.,
Respondent.

OSHRC DOCKET
NO. 91-0727

**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 9, 1993. The decision of the Judge will become a final order of the Commission on July 9, 1993 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 June 29, 1993 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:

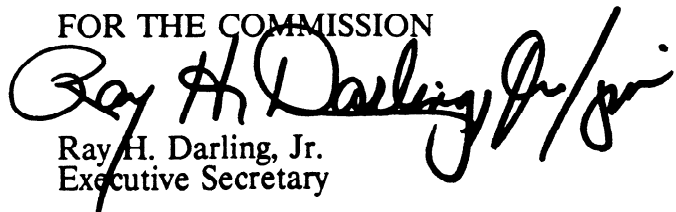
Executive Secretary
Occupational Safety and Health
Review Commission
1120 20th St. N.W., Suite 980
Washington, D.C. 20036-3419

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 9, 1993

DOCKET NO. 91-0727

NOTICE IS GIVEN TO THE FOLLOWING:

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Sidney J. Goldstein
Administrative Law Judge
Occupational Safety and Health
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SECRETARY OF LABOR,
Complainant,

v.

CHERRY HILL TUNE
& LUBE, INC.,
Respondent.

OSHRC Docket No. 91-0727

APPEARANCES:

For Complainant:

Luis A. Micheli, Esq., Office of the Solicitor, U.S. Department of Labor,
New York, New York

For Respondent: (NONE)

Before: Administrative Law Judge Sidney J. Goldstein

DECISION AND ORDER

After a compliance officer for the Occupational Safety and Health Administration inspected a workplace of the Respondent, that Agency concluded that the Company violated safety regulations relating to machinery and hazardous chemicals adopted under the Occupational Safety and Health Act of 1970 and issued two citations to Cherry Hill Tune & Lube, Inc. The Respondent disagreed with the citations and filed a notice of contest.

A hearing in connection with the Respondent's notice of contest was set for February 4, 1992, but the notice of hearing addressed to the Company was returned by the post office with the notation that the Respondent moved and left no forwarding address.

A new hearing was scheduled for May 22, 1992 and notice thereof was mailed to Mr. James E. Vaughn who signed the notice of contest. In reply, he wrote to the effect that he could not appear on that date in order to attend his daughter's graduation ceremonies.

The matter was later rescheduled for February 2, 1993, and notice of hearing was sent certified mail to Mr. Vaughn's address shown on his request for postponement of the May 22, 1992 date. This notice of hearing was returned by the post office with the notation that the envelope was unclaimed after three delivery attempts.

The case was then reset for March 19, 1993 and notice of the new hearing date was again sent certified mail to Mr. Vaughn. Once more the post office returned the envelope marked that the mail was unclaimed after three delivery attempts.

The notice of hearing was then remailed to Mr. Vaughn. This notice of the hearing date and a subsequent notice of the hearing room location, both sent by first class mail, were not returned by the post office.

At the time and place scheduled for the hearing the Complainant appeared with a witness prepared to proceed. However, neither Mr. Vaughn nor a representative on his or the corporation's behalf appeared at the proceedings or requested a postponement thereof. More than a month has elapsed since the hearing date without communication from Mr. Vaughn or the corporation explaining the failure to appear at the hearing.

In this connection Section §2200.63(a) of the Commission Rules of Procedure provides:

Attendance at hearing. The failure of a party to appear at a hearing may result in a decision against that party.

Since notices of hearing sent certified mail were returned unclaimed; since notices of hearing and of location of the hearing room were mailed first class and not returned by the post office; and since neither Mr. Vaughn nor anyone on behalf of the Respondent appeared at the hearing or requested a postponement, the citations and attendant penalty are affirmed.


Sidney J. Goldstein
Judge, OSHRC

Dated: May 28, 1993