

No. 24-2313

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

**JULIA A. SU,
ACTING SECRETARY OF LABOR**

Petitioner,

v.

**ELMER MILLER, d/b/a
MILLER BUILDING SYSTEMS LLC**

Respondent.

**On Petition for Enforcement of a Final Order of the Occupational Safety &
Health Review Commission**

BRIEF FOR THE ACTING SECRETARY OF LABOR

SEEMA NANDA
Solicitor of Labor

EDMUND C. BAIRD
Associate Solicitor for
Occupational Safety and Health

HEATHER PHILLIPS
Counsel for Appellate Litigation

JESSICA E. MATTHIS
Attorney
U.S. Department of Labor
200 Constitution Ave. NW, Room S-4004
Washington, DC 20210
(202) 693-5491

October 21, 2024

STATEMENT REGARDING ORAL ARGUMENT

The Secretary believes that the issues in this case can be resolved on the papers and does not request oral argument.

DISCLOSURE STATEMENT

Under Seventh Circuit Rule 26.1(a) and Federal Rule of Appellate Procedure 26.1(a), because Petitioner is a governmental party, she need not furnish a certificate of interested persons.

/s/ Jessica E. Matthis
JESSICA E. MATTHIS
Attorney of record for Petitioner

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JURISDICTIONAL STATEMENT

This matter is before the court on the Secretary’s petition for summary enforcement of a January 13, 2023 final order of the Occupational Safety & Health Commission (“Commission”), pursuant to section 11(b) of the Occupational Safety & Health Act, 29 U.S.C. § 660(b) (“Act” or “OSH Act”).¹ This Commission final order arose from a citation issued following OSHA Inspection No. 1629559. *See* Citation & Notification of Penalty, Certified Agency Record (“Record”) at 10. Because Respondent Elmer Miller (“Miller”) did not contest the citation, it became a final order of the Commission pursuant to section 10(a) of the Act, which provides that if an employer fails to file a notice of contest within fifteen days of receipt of a citation and notification of penalty, the citation shall be deemed a final order of the Commission not subject to review by any court or agency. 29 U.S.C. § 659(a).

This court has jurisdiction over this matter pursuant to section 11(b) of the Act, which allows the Secretary to obtain “review or enforcement of any final order of the Commission by filing a petition for such relief in the United States court of appeals for the circuit in which the alleged violation occurred or in which

¹ Miller’s answer correctly states that the final order date noted in the Secretary’s July 30, 2024 summary enforcement petition was miscalculated using calendar days instead of working days. *See* Resp’t’s Answer to Pet’r’s Pet. for Summ. Enforcement and Proposed J. Resp. 5, ECF No. 3 (citing 29 U.S.C. § 659(a)). This error in calculation has no bearing on the statutory basis for granting the Secretary’s petition for summary enforcement. *See infra* page 14 for discussion of the correct final order date of January 13, 2023.

the employer has its principal office[.]” 29 U.S.C. § 660(b). Venue in this circuit is proper because the alleged violation occurred in Champaign, Illinois. *See* Record at 10; 29 U.S.C. § 660(b). There is no time limit for filing a petition for summary enforcement of Commission final orders. 29 U.S.C. § 660(b).

STATEMENT OF THE ISSUES

1. Whether, under 29 U.S.C. § 659(a), the OSHA citation issued to Miller became an unreviewable final order of the Commission by operation of law on January 13, 2024, where Miller received and had actual knowledge of the citation and failed to contest the citation within 15 working days of receipt.
2. Whether OSHA’s service of the citation to Miller fulfilled notice obligations under section 10 of the Act where Miller twice refused delivery of the citation via certified mail, OSHA then sent and Miller actually received the citation via UPS ground delivery, and this method of service was reasonably calculated to provide Miller with knowledge of the citation and an opportunity to determine whether to abate or contest the citation.

STATEMENT OF THE CASE

I. Procedural History and Relevant Background Facts

Miller is a general contractor specializing in residential housing construction in central Illinois. On October 20, 2022, OSHA² opened an inspection of Miller's worksite in Champaign, Illinois after an OSHA compliance officer observed employees performing framing work on a residential construction site without fall protection at heights of up to 11 feet. Record at 10, 13. This inspection identified a willful violation of 29 C.F.R. § 1926.501(b)(13) for failing to provide and require employees to use fall protection and proposed a penalty of \$79,765. *Id.* at 1, 10. OSHA issued a citation for this violation on December 2, 2022, and sent the citation to Miller's Arcola, Illinois address via USPS Certified Mail on that same day.³ *Id.* at 1, 10, 13, 14, 16. USPS Tracking shows that Miller refused⁴ the certified mailing twice on December 5, 2022, so the mailing was returned to

² The Secretary's responsibilities under the OSH Act have been delegated to the Assistant Secretary for Occupational Safety and Health, who heads OSHA. *See* Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Occupational Safety and Health, 85 Fed. Reg. 58393 (Sept. 18, 2020). The terms "Secretary" and "OSHA" are used interchangeably in this petition.

³ Miller Building Systems LLC is registered with the Illinois Secretary of State at this address. Elmer Miller, in his individual capacity, is registered as the company's agent at this address. *See* Exhibit 1 (attached).

⁴ The USPS Domestic Mail Manual provides: "The addressee may refuse to accept a mailpiece when it is offered for delivery." USPS Domestic Mail Manual, Chapter 508 § 1.1.2 Refusal at Delivery, <https://pe.usps.com/text/dmm300/508.htm#ep1132466>.

OSHA's Peoria Area Office as undeliverable on December 12, 2022. *Id.* at 13, 15, 16.

Upon learning that Miller had refused the certified mailing, OSHA re-sent the citation to Miller's same Arcola address via UPS ground service on December 19, 2022. *Id.* at 18-19. UPS tracking shows delivery of the citation and that Miller received it on December 20, 2022. *Id.* at 19. Miller did not file a notice of contest within 15 working days of receiving the citation, and therefore the citation became a final order of the Commission by operation of law on January 13, 2023. *See* 29 U.S.C. § 659(a).

The OSH Act provides for prompt enforcement of Commission final orders after the sixty-day period for filing a petition for review with a court of appeals has expired. 29 U.S.C. § 660(b). Since no petition for review was filed within the statutory sixty-day period, the Commission's January 13, 2023 final order became conclusive (*i.e.*, ripe for summary enforcement by this Court) on March 14, 2023. *Id.*

On July 30, 2024, the Secretary petitioned the Court for an order summarily enforcing the Commission's January 13, 2023 final order. *See* Pet. for Enforcement, ECF No. 1. On August 21, 2024, Miller filed an answer requesting that the court deny the petition for summary enforcement. Miller claimed that because the company did not receive the citation via certified mail, the uncontested

citation did not become a Commission final order and is therefore not enforceable by the Court. *See* Resp't's Answer to Pet'r's Pet. for Summ. Enforcement and Proposed J. Resp. 3-4, ECF No. 3. Miller also asserted that he has a history of receiving and contesting OSHA citations and that OSHA knew he was represented by attorneys who could have accepted service on his behalf. *Id.* at 4-5. Miller further claimed that, even if service was proper, the Secretary miscalculated the date that the citation became a final order of the Commission by counting calendar days, rather than working days. *Id.* at 5.

II. Statutory Framework

Congress enacted the OSH Act in 1970 “to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.” 29 U.S.C. § 651(b). OSHA enforces the OSH Act by inspecting workplaces for violations of the Act. If OSHA discovers a violation at the worksite, it issues a citation that describes the violative condition, establishes a date by which the employer must abate the violation, and, where appropriate, proposes a penalty. *Id.* §§ 658-659, 666. A violation of the Act may be classified as “serious,” “other-than-serious,” “willful,” or “repeated.” *Id.* § 666. OSHA must “notify the employer by certified mail” of the citation and any proposed penalty. *Id.* § 659(a).

An employer wishing to contest the citation must file a notice of contest

“within fifteen working days from the receipt” of the citation. *Id.* “Failure to contest either the citation or proposed penalty within the designated time renders the citation and the assessment the final order of the Commission which is not subject to review by any court or agency.” *Penn-Dixie Steel Corp. v. Occupational Safety & Health Review Com’n*, 553 F.2d 1078, 1081 (7th Cir. 1977) (citing 29 U.S.C. § 659(a)); *see also* 29 C.F.R. § 1903.17(a) (“Such notice of intention to contest shall be postmarked within 15 working days of the receipt by the employer of the notice of proposed penalty.”).

Section 10(a) of the Act sets forth the requirement for notifying the employer of the violations, which then triggers the employer’s 15-working-day period within which to contest a citation or the proposed penalty. Specifically, section 10(a) provides:

If, after an inspection, the Secretary issues a citation under section 9(a), 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, to be assessed under section 17 and that the employer has fifteen working days within which to notify the Secretary that he intends to contest the citation or proposed assessment of penalty.

29 U.S.C. § 659(a).

After an uncontested citation becomes a final order of the Commission, the Secretary may obtain “review or enforcement of any final order of the Commission by filing a petition for such relief in the United States court of appeals for the circuit in which the alleged violation occurred or in which the employer has its

principal office[.]” 29 U.S.C. § 660(b). Summary enforcement is a purely ministerial action. *Id.* (“in the case of an uncontested citation . . . which has become a final order of the Commission . . . the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order”); *see also Chao v. Russell P. Le Frois Builder, Inc.*, 291 F.3d 219, 223 (2d Cir. 2002) (judicial “review” of Commission orders deemed final because of employer failure to contest, unless the court orders otherwise, “consists of no more than the entry of ‘a decree enforcing the order’”); *Brock v. Morysville Body Works, Inc.*, 829 F.2d 383, 386 (3d Cir. 1987) (citation that becomes final through a failure to contest is “uncontestable and is to be entered as ‘an automatic court enforcement order’ of the Court of Appeals”) (citation omitted).

SUMMARY OF THE ARGUMENT

The Court should grant the Secretary’s petition for summary enforcement. The December 2, 2022 uncontested citation issued to Miller by OSHA became a final order of the Commission by operation of law on January 13, 2023, and pursuant to the OSH Act is unreviewable by any court or agency. In an apparent effort to avoid service, Miller twice refused to accept the certified mailing of the citation, and OSHA’s subsequent use of UPS ground service therefore fulfilled OSHA’s notice obligation under section 10(a) of the Act as it was reasonably calculated to provide Miller with knowledge of the citation and an opportunity to

abate or contest. Miller failed to contest the citation within the 15-day statutory timeframe, despite receiving actual notice of the citation when it was delivered via UPS ground service. Miller failed to allege any prejudice from this form of delivery, and the Secretary's erroneous calculation of the final order date (counting calendar days rather than working days) in her petition for enforcement is of no moment; the OSH Act specifies the final order date, and the uncontested citation therefore become an enforceable final order on January 13, 2023.

STANDARD OF REVIEW

Because an uncontested citation becomes a “final order of the Commission which is not subject to review by any court or agency[,]” the merits of the citation and penalty at issue here are unreviewable. *Penn-Dixie Steel Corp.*, 553 F.2d 1081 (citing 29 U.S.C. § 660(b)). Accordingly, this Court only has jurisdiction to review the facts surrounding notice, and whether OSHA's service of the citation was proper. *See* 29 U.S.C. § 660(b) (unless otherwise ordered by the court, entry of enforcement order is automatic).

ARGUMENT

I. Section 11(b) Enforcement by the Court Is Appropriate Because the Citation Is an Unreviewable Final Order of the Commission

The Act specifies that a citation becomes a final order of the Commission unless the employer contests the citation within fifteen working days of receipt. 29 U.S.C. § 659(a); *Martin v. Pav-Saver Mfg. Co.*, 933 F.2d 528, 528-29 (7th Cir.

1991); *Penn-Dixie Steel Corp.*, 553 F.2d 1081 (7th Cir. 1977). Here, the record establishes that on December 5, 2022, Miller twice refused to accept OSHA's certified mailing of the citation. Record at 16. Miller's refusal required OSHA to turn to an alternate means of service, as the OSH Act does not countenance an employer avoiding a citation simply by refusing to accept a certified mailing.

UPS tracking confirms that after OSHA re-sent the citation on December 19, 2022, Miller received it on December 20, 2022, at 3:29 PM. *Id.* at 19. Pursuant to section 10(a), Miller had 15 working days from his receipt of the citation to submit a notice of contest. *See* 29 U.S.C. §§ 659(a). It is undisputed that Miller failed to do so. Accordingly, because the citation was uncontested, it became a final order on January 13, 2023, that may be summarily enforced by this Court. *See* 29 U.S.C. §§ 659(a), 660(b).

Miller correctly notes that the Secretary's July 30, 2024 11(b) petition to the Court miscalculated the date that the citation became a final order of the Commission by counting calendar days instead of working days. *See* Pet. for Enforcement 1, 4-5, ECF No. 1. Miller claims that because the citation did not become a final order on January 4, 2023 (the miscalculated date), it somehow *never* became a final order. *See* Answer at 5. This assertion is false. Miller fails to recognize that the OSH Act establishes the final order date, not the Secretary (and any miscounting of days). Miller does not dispute that he did not contest the citation within fifteen working days of receipt of the citation. Indeed, Miller has

never contested the citation, even outside of the fifteen-working-day timeframe, nor has he claimed that a late notice of contest would be excusable in this case. *See Sec’y of Labor v. Baretto Granite Corp.*, 830 F.2d 396, 399-400 (1st Cir. 1987) (collecting Commission cases discussing excusable untimely notices of contest). Accordingly, the citation became a final order by operation of law on January 13, 2023, and summary enforcement by this Court is appropriate pursuant to section 11(b) of the Act.

II. Service by UPS Ground Was Proper and Reasonably Calculated to Provide Miller with Knowledge of the Citation and an Opportunity to Determine Whether to Abate or Contest

OSHA’s use of UPS ground delivery was reasonably calculated in this case to apprise Miller of the citation and proposed penalty because Miller refused to accept certified mailings. OSHA’s service of the citation via certified mail met the requirements of section 10(a), regardless of Miller’s refusal to accept the mailing. In any event, the use of a method of service other than USPS certified mail is permissible where service was first or concurrently attempted via certified mail without success. Miller received the UPS ground delivery and therefore had actual notice of the citation and proposed penalty. Because Miller has not identified any resulting harm from receiving the citation via UPS ground service, rather than USPS certified mail, he has failed to establish prejudice, and the Secretary’s petition should be granted.

a. Because Miller Refused Service Via USPS Certified Mail, OSHA's Use of UPS Ground Delivery Was an Appropriate and Reasonably Calculated Alternate Method

Section 10(a) states that OSHA must “notify the employer by certified mail” of the citation and any proposed penalty.⁵ 29 U.S.C. § 659(a); *B.J. Hughes, Inc.*, 7 BNA OSHC 1471, 1474, 1979 WL 8462, at *3 n.6 (No. 76-2165, 1979). For over forty years, the Commission has held that the test for determining proper notification under section 10(a) 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.*, 1979 WL 8462 at *3. The method of service for citations provided in section 10(a) is “not necessarily exclusive,” and “an alternative method may be used if service by certified mail cannot be effected.” *Donald K. Nelson Constr., Inc.*, 3 BNA OSHC 1914, 1976 WL 30037, at *1 (No. 4309, 1976).

The *B.J. Hughes* test mirrors the test articulated by the United States Supreme Court for determining whether a claimant has received sufficient due process notice before deprivation of property. *See Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314-15 (1950) (to satisfy due process, notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of

⁵ Although section 10(a) uses the terms “notify” and “notice,” the Commission has consistently treated the concepts of “notice” and “service” of citations interchangeably for purposes of section 10(a). *See, e.g., B.J. Hughes*, 1979 WL 8462, at *3; *Nynex*, 18 BNA OSHC 1944, 1999 WL 820638, at *3 (No. 95-1671, 1999).

the pendency of the action and afford them an opportunity to present their objections.”). In keeping with these due process principles, the Supreme Court has held that the government need only undertake “reasonable additional efforts” to notify a party when it learns that the initial notice sent via certified mail went unclaimed.⁶ *Jones v. Flowers*, 547 U.S. 220, 234 (2006). The government, however, is not required to undertake “heroic efforts” to assure the notice’s delivery. *Dusenbery v. United States*, 534 U.S. 161, 170-71 (2002); accord *Taylor v. United States*, 483 F.3d 385, 388 (5th Cir. 2007).

Consistent with the above precedent, OSHA’s Field Operations Manual (“FOM”) provides:

Citations shall be sent by certified mail. Hand delivery of citations to the employer or an appropriate agent of the employer, or use of a mail delivery service other than the United States Postal Service, can be used **in addition** to certified mail if it is believed that these methods would effectively give the employer notice of the citation. A signed receipt shall be obtained whenever possible. The circumstances of delivery shall be documented in the diary sheet.

OSHA Directive CPL 02-00-164, Chapter 5, § XI(b)(1) (emphasis in original).

This provision of the FOM expressly allows OSHA to use a mail delivery service other than USPS certified mail when, as occurred in this case, the Secretary has already attempted to notify the employer of the citation via certified mail. *See*

⁶ Miller has not raised a due process claim. In any event, the Commission’s *B.J. Hughes* test for proper service under section 10(a) and the Supreme Court’s *Mullane* test for due process notice are essentially the same, and the employer bears the burden of showing a denial of due process. *Nynex*, 18 BNA OSHC 1944, 1999 WL 820638, at *4 (No. 95-1671, 1999).

also DRTG Builders, LLC v. Occupational Safety & Health Com’n, 26 F.4th 306 (5th Cir. 2022) (OSHA properly served employer with notice of citation where OSHA first sent citation via USPS certified mail, and then when USPS delivery attempt was unsuccessful, OSHA sent citation by UPS).

Here, consistent with the caselaw and the FOM, OSHA first attempted to send the citation by certified mail, and, upon learning that service via certified mail could not be effected because Miller twice refused to accept the certified mailing, sent the citation by UPS ground. Record at 14-16, 19. Even aside from the confirmed UPS ground delivery of the citation, OSHA’s first attempted service via USPS certified mail satisfied its notice obligation under section 10(a) of the Act. Miller’s refusal to accept the certified mailing does not invalidate OSHA’s proper service of the citation. *See DRTG*, 26 F.4th 306 (refusal to accept mail does not affect validity of service); *Maxim Crane Works*, 2020 WL 9894075, at *8 (No. 17-1894, 2020) (ALJ) (service of “certified mailing of the Citation and Notification of Penalty was still valid, even though Respondent did not receive it” for purposes of section 9(c) and 10(a)), *cert. denied*, 2022 WL 2160669 (6th Cir. 2022).

Regardless, OSHA’s additional method of service via UPS ground delivery was reasonably calculated to provide Miller with knowledge of the citation, as demonstrated by Miller’s actual receipt of the citation on December 20, 2022,

which Miller has not disputed.⁷ Record at 19; *see generally* Answer. Nor has Miller alleged that the address OSHA used for delivery—the company’s principal address—was incorrect, or given any explanation for his repeated refusal to accept the certified mailing sent to that address. *See* Exhibit 1; *David E. Harvey Builders, Inc. v. Sec’y of Labor*, 724 Fed.Appx. at *9 (D.C. Cir, May 11, 2018) (OSHA’s method of service reasonably calculated where citation was sent to one of employer’s offices and “nothing in the record suggests that [employer] ever alerted OSHA to the possibility that the company had some other main office or received mail elsewhere.”). As the UPS ground delivery afforded Miller actual knowledge of the citation and an opportunity to determine whether to abate or contest the citation, this method of service was reasonably calculated, and met OSHA’s obligation to apprise Miller of the citation and penalty.⁸

⁷ Regardless, neither section 10(a) of the Act nor the Due Process Clause require “[a]ctual receipt” of the citation. *See Dusenbery v. United States*, 534 U.S. 161, 170 (2002) (Supreme Court precedent “does not say that the [government] must provide actual notice, but that it must attempt to provide actual notice.” (emphasis in original)); *United States v. Robinson*, 434 F.3d 357, 366 (5th Cir. 2005) (“Due process does not require actual notice or actual receipt of notice.”); *P & Z Co., Inc.*, 7 BNA OSHC 1589, 1979 WL 8474, at *3 n.9 (No. 14822, 1979) (section 10(a) does not require actual notice); *Maxim Crane Works*, 2020 WL 9894075, at *8 (No. 17-1894, 2020) (ALJ) (service of “certified mailing of the Citation and Notification of Penalty was still valid, even though Respondent did not receive it”), *cert. denied*, 2022 WL 2160669 (6th Cir. 2022).

⁸ Miller cites an unpublished decision regarding service requirements under Wisconsin’s notice-of-claim statute in support of his argument that, despite receiving the citation via UPS delivery, he should not be held liable for the violation because service was imperfect. *See* Answer at 2, 4 (citing *Burgess v. Shima*, 2021 WL 5811225 (W.D. Wis. Dec. 7, 2021) (unpub.)). A case interpreting state law is clearly inapposite to the notice requirement of section 10(a) of the OSH Act. Regardless, service in the present case was reasonably calculated to apprise Miller of the citation and proposed penalty, *see supra* pages 15-19, and to hold otherwise would frustrate the

b. Miller Suffered No Prejudice from Receiving the Citation Via UPS Ground Service.

The Commission has long held that “if an employer receives actual notice of a citation, it is immaterial to the exercise of the Commission’s jurisdiction that the manner in which the citation was sent was not technically perfect.” *General Dynamics*, 1993 WL 1618817, at *4 (citing *Brock v. Pierce County*, 476 U.S. 253, 260 (1986) (citation omitted)). In other words, “if the citation does provide actual notice, a technical defect in the manner it was sent does not render it invalid.” *P&Z Co., Inc.*, 7 BNA OSHC 1589, 1979 WL 8474, at *3 n.9 (No. 14822, 1979). Moreover, “ordinarily, nonreceipt or refusal to accept mail does not affect the validity of service.” *George Barry*, 9 BNA OSHC 1264, 1981 WL 18843, *4 (No. 77-2720, 1981) (citing 4 C. Wright & A. Miller, *Federal Practice and Procedure* § 1148 at 590–91 (1969)).

Assuming, without conceding, that there was any technical defect with OSHA’s service via certified mail, the Secretary maintains that Miller was subsequently properly served via UPS because he does not dispute that he received the citation on December 20, 2022, and therefore had actual notice. Record at 19. Nonetheless, Miller claims that OSHA’s use of UPS ground delivery “has harmed Respondent” (in some unspecified manner), Answer at 4, despite failing to offer

purpose of the OSH Act. If employers could avoid liability by simply refusing to receive certified mailings, OSHA citations would be effectively unenforceable.

any explanation for his repeated refusal to accept the initial certified mailing. Generally, the party claiming harm bears the burden of establishing prejudicial impact. *See, e.g., Tuf-Flex Glass v. NLRB*, 715 F.2d 291, 297 (7th Cir. 1983) (party claiming prejudice failed to meet threshold burden to establish prejudice); *General Dynamics*, 15 BNA OSHC 2122, 1993 WL 1618817, at *3 (No. 87-1195, 1993) (employer must establish prejudice). Miller, however, has not explained how receiving the citation via UPS ground, instead of certified mail, hindered his ability to contest the citation once he learned of it. *See generally* Answer at 4-5.

Miller further alleges that, because he refused to receive the certified mailing, “it is pure speculation to conclude that Respondent would not have contested the Citation,” Answer at 4. But no speculation is required to observe that Miller actually received the citation on December 20, 2022, at the company’s principal address, yet never filed a notice of contest. Record at 19; Exhibit 1. Miller also argues that he was harmed by OSHA’s use of UPS ground delivery because Miller’s attorneys could have accepted service on Miller’s behalf, “had OSHA reached out,” Answer at 4. Miller cites no authority that requires OSHA to serve an employer’s *attorneys* with notice of the citation. *See* 29 U.S.C. 659(a) (OSHA has an obligation to serve *the employer* with notice of the citation and penalty) (emphasis added); *Cf. B.J. Hughes*, 7 BNA OSHC at 1474 (nothing in the Act requires OSHA to attempt to discern which company official is responsible for handling OSHA citations). Accordingly, because Miller has failed to establish any

harm resulting from receiving the citation via UPS ground service, the Secretary's petition for enforcement should be granted. *See Tuf-Flex Glass*, 715 F.2d 297 (7th Cir. 1983) (employer failed to establish prejudice and therefore "not entitled to non-enforcement [of Agency order] on the basis of possible procedural error"); *Dodson v. National Transp. Safety Bd.*, 644 F.2d 652 (7th Cir. 1981) (petitioner's claim of prejudice failed because he failed to "adequately demonstrated how he was prejudiced or injured" by procedural error).

CONCLUSION

For the above reasons, the Secretary requests that the Court grant the Secretary's petition for summary enforcement and issue the requested enforcement decree pursuant to 29 U.S.C. § 660(b).

SEEMA NANDA
Solicitor of Labor

EDMUND BAIRD
Associate Solicitor of Labor for
Occupational Safety and Health

HEATHER PHILLIPS
Counsel for Appellate Litigation

/s/ Jessica E. Matthis
JESSICA E. MATTHIS
Attorney
U.S. Department of Labor
Office of the Solicitor
Rm. S-4004
200 Constitution Ave., N.W.
Washington, D.C. 20210
(202) 693-5491

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations, typeface requirements, and type-style requirements of Fed. R. App. P. 32 and Circuit Rule 32. This brief was prepared in a proportionally spaced typeface using Microsoft Word and 14-point, Times New Roman font.

/s/ Jessica E. Matthis

JESSICA E. MATTHIS
Attorney
U.S. Department of Labor
Office of the Solicitor
Rm. S-4004
200 Constitution Ave., N.W.
Washington, D.C. 20210
(202) 693-5491

October 21, 2024

EXHIBIT 1



Office of the Secretary of State
ilsos.gov

New Facility Hours and Appointments

APPOINTMENTS REQUIRED for REAL ID, DL/ID card services and in-car driving tests. Check your local DMV facility for [extended hours and appointment availability](#).



Business Entity Search

Entity Information

Entity Name	MILLER BUILDING SYSTEMS LLC		
Principal Address	435 E. COUNTY RD. 100N ARCOLA, IL 619100000		
File Number	06012302	Status	ACTIVE on 01-17-2023
Entity Type	LLC	Type of LLC	Domestic
Org. Date/Admission Date	02-02-2017	Jurisdiction	IL
Duration	PERPETUAL		
Annual Report Filing Date	01-17-2023	Annual Report Year	2023

**Agent
Information**

ELMER M. MILLER
435 E. COUNTY RD. 100N
ARCOLA, IL 61910

**Agent
Change
Date**

02-02-2017

Services and More Information

Choose a tab below to view services available to this business and more information about this business.

Purchase Master Entity Certificate of Good Standing

[Articles of Amendment Effecting A Name Change](#)

[Adopting Assumed Name](#)

[Change of Registered Agent and/or Registered Office](#)

APPENDIX

EXHIBIT A

Citation arising from Inspection No. 1629559 that became a final order of the Commission by operation of law of January 13, 2023. 29 U.S.C. § 659(a) (“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 . . . the citation and assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency”).



Citation and Notification of Penalty

Company Name: Elmer Miller, dba Miller Building Systems LLC
Inspection Site: 5012 Abbey Fields Drive, Champaign, IL 61822

Citation 1 Item 1 Type of Violation: **Willful - Serious**

29 CFR 1926.501(b)(13): Each employee(s) engaged in residential construction activities 6 feet (1.8 m) or more above lower levels were not protected by guardrail systems, safety net system, or personal fall arrest system, nor were employee(s) provided with an alternative fall protection measure under another provision of paragraph 1926.501 (b):

Miller Building Systems, LLC - Arcola, Illinois: The employer does not ensure employees are provided with and utilize fall protection, when exposed to fall hazards while framing on residential construction sites. This hazard was most recently observed on or about October 20, 2022, while employees were exposed to fall hazards of 11 feet without fall protection, on a residential construction site in Champaign, Illinois.

ABATEMENT DOCUMENTATION REQUIRED FOR THIS ITEM

Date By Which Violation Must be Abated:	December 13, 2022
Proposed Penalty:	\$79,765.00


for _____
Christine Zortman
Area Director

APPENDIX CERTIFICATION

Pursuant to Circuit Rule 30(d), I certify that the appendix includes all materials required by Circuit Rule 30(a) and (b).

/s/ Jessica E. Matthis
JESSICA E. MATTHIS
Attorney
U.S. Department of Labor
Office of the Solicitor
Rm. S-4004
200 Constitution Ave., N.W.
Washington, D.C. 20210
(202) 693-5491

October 21, 2024

CERTIFICATE OF SERVICE

I certify that on October 21, 2024, a copy of the foregoing was filed electronically on CM/ECF pursuant to Fed R. App. P. 25(a)(2)(B) and Cir. R. 25(d). I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Jessica E. Matthis
JESSICA E. MATTHIS
Attorney
U.S. Department of Labor
Office of the Solicitor
Rm. S-4004
200 Constitution Ave., N.W.
Washington, D.C. 20210
(202) 693-5491

October 21, 2024