



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

PEACOCK ENGINEERING, INC.,

Respondent.

OSHRC Docket Nos. 11-2780 & 11-2780-A

APPEARANCES:

Amy S. Tryon, Attorney; Charles F. James, Counsel for Appellate Litigation; Joseph M. Woodward, Associate Solicitor of Labor for Occupational Safety and Health; M. Patricia Smith, Solicitor of Labor; U.S. Department of Labor, Washington, DC
For the Complainant

James A. D'Ambrosio, Esq.; Chase M. Stern, Esq.; Stark & D'Ambrosio, LLP, San Diego, CA
For the Respondent

SEVERANCE ORDER

Before: MACDOUGALL, Acting Chairman; and ATTWOOD, Commissioner.

BY THE COMMISSION:

On review are two citation items issued to Peacock Engineering, Inc., an installer of burial crypts at Miramar National Cemetery in San Diego, California.¹ Under Item 1, the Secretary alleges a violation of the Occupational Safety and Health Act's general duty clause, 29 U.S.C. § 654(a)(1), based on the exposure of Peacock employees to "amputation, struck by and crushed by hazards, while guiding a suspended [crypt] by hand" onto its plot. Under Item 5, the Secretary alleges a serious violation of a provision of the material handling equipment standard, 29 C.F.R. § 1926.602(c)(1)(ii), based on the company having modified, without the manufacturer's approval, the forklift used to move crypts from where they were delivered at the

¹ Four other citation items were issued to Peacock—two were settled below (Items 2 and 4), and two were affirmed (Items 3 and 6) but not petitioned for review.

cemetery to a staging area. Administrative Law Judge Patrick B. Augustine vacated both of these items, and the Secretary sought review of the judge's decision.

Because we cannot agree on the disposition of Item 5, and given that Items 1 and 5 require adjudication of almost entirely separate facts, we hereby sever Item 5 pursuant to Commission Rule 10.² Item 1 remains assigned to Docket No. 11-2780, while Item 5 is now assigned to Docket No. 11-2780-A.

SO ORDERED.

/s/ _____
Heather L. MacDougall
Acting Chairman

Dated: April 27, 2017

/s/ _____
Cynthia L. Attwood
Commissioner

² Commission Rule 10 provides that “[u]pon its own motion, . . . the Commission . . . may order any proceeding severed with respect to some or all claims or parties.” 29 C.F.R. § 2200.10.