



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.

U.S. WELL SERVICES, LLC,

Respondent.

OSHRC DOCKET No. 17-0524

**ORDER DISALLOWING ELECTION OF PARTY STATUS
SOUGHT BY THE ESTATE OF HUNTER OSBORNE,
MR. DARIN D. OSBORN, AND MS. CYNTHIA D. OSBORN**

The underlying matter involves a contest by the Respondent, U.S. Well Services, LLC, to a single item citation that alleges it violated section (5)(a)(1) of the Occupational Safety and Health Act of 1970 (OSH Act) on or about January 12, 2017, by permitting employees “to walk behind a vehicle as it backed up to an unloading station exposing employees to struck by and caught by hazards.” The hearing in the matter is scheduled for April 5-6, 2018.

Attorney Robert B. Warner has filed letters dated November 21, 2017 and December 5, 2017, requesting that the co-administrators of the Estate of Hunter Dwight Osborn (Mr. Darin Osborn and Ms. Cynthia Osborn) be accorded party status pursuant to Commission Rule 20(a). 29 C.F.R. § 2200.20(a). The Osborn’s are also the parents of the decedent, Hunter Dwight Osborn. They were appointed co-administrators of the estate of their son by a letter of administration issued by Clerk of the Lewis County Commission in the State of West Virginia on February 6, 2017.

Attorney Warner's letters state that the decedent was "the employee effected by the hazards cited by OSHA when it inspected his employer, U.S. Well Services, LLC." Though the Commission's case file in the matter does not presently reflect it, the undersigned presumes that Hunter Dwight Osborn's death was the event that precipitated the OSHA inspection and subsequent citation that underlie this matter.

As described below, neither the Osborn's nor their son's estate are eligible to elect party status under Rule 20, so the request for party status must be disallowed.

Section 10(c) of the OSH Act provides in part: "The rules of procedure prescribed by the Commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this subsection." 29 U.S.C. § 659(c).

In conformance with that statutory requirement, Commission Rule 20(a) provides as follows: "Affected employees and authorized employee representatives may elect party status concerning any matter in which the Act confers a right to participate." 29 C.F.R. § 2200.20(a).

Commission Rule 1(e) defines the term "affected employee" to mean "an employee of a cited employer who is exposed to or has access to the hazard arising out of the allegedly violative circumstances, conditions, practices, or operations." 29 C.F.R. § 2200.1(e). Commission Rule 1(g) defines the term "authorized employee representative" to mean "a labor organization that has a collective bargaining relationship with the cited employer and that represents affected employees." 29 C.F.R. § 2200.1(g). The Estate of Hunter Dwight Osborn does not qualify for party status under either definition, nor do the Osborn's in their status as parents of the decedent.

Neither the estate nor the decedent's parents qualify under Rule 20 as an "authorized employee representative," because that term is specifically limited to "a labor organization that

has a collective bargaining agreement with the cited employer and that represents affected employees.” 29 C.F.R. § 2200.1(g).

The definition of “affected employee” refers to exposure in the present tense. The definition contemplates only current employees being eligible to claim party status, because only current employees are actively exposed to the hazard under review by the Commission. Current employees have an interest in ensuring the continued safety of their workplace that is unique from former employees and non-employees.

The universe of former employees necessarily includes a person who had been employed by a cited employer, but whose employment tragically ended as the result fatal injuries that were occasioned by a hazardous condition that the Secretary has alleged violated the Act. Neither the Estate of Hunter Osborn, nor the Osborn’s in their status of surviving parents of Hunter Osborn, meet the necessary qualifications for party status under Rule 20 as an “affected employee” as that term is defined.

Though the disallowance of party status under Rule 20 may strike some as callous, it should be noted that nothing in this order prevents the Osborn’s from protecting their legal interests either as co-administrators of the estate or as parents of the decedent. Section (4)(b)(4) of the Act provides as follows:

Nothing in this Act shall be construed to supersede or in any manner affect any workmen’s compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.

29 U.S.C. § 653(b)(4).

For these reasons, the request for party status under Rule 20 must be disallowed.

SO ORDERED.

/s/
WILLIAM S. COLEMAN
Administrative Law Judge

DATED: December 15, 2017