



United States of America  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
1120 20<sup>th</sup> Street, N.W., Ninth Floor  
Washington, D.C. 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

HOURAN USA CONSTRUCTION, LLC,

Respondent.

OSHRC Docket No. 18-1261

Appearances: David J. Rutenberg, Esq.  
Office of the Regional Solicitor  
United States Department of Labor  
201 Varick Street, Room 983  
New York, N.Y. 10014

For the Complainant

Steve J. Houran, *Pro Se*  
Houran USA Construction, LLC  
10 Stuyvesant Ave., 2<sup>nd</sup> Floor  
Lyndhurst, N.J. 07071

For the Respondent

Before: Keith E. Bell  
Administrative Law Judge

## **DECISION AND ORDER**

This proceeding is before the Occupational Safety and Health Review Commission (the Commission) pursuant to section 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 451 (the Act). The Occupational Safety and Health Administration (OSHA) conducted an inspection of a worksite located at 193 Palisade Ave. in Jersey City, N.J. 07306 on or about May 9, 2018. As a result, on July 13, 2018, OSHA issued a Citation and Notification of Penalty (Citation) to Houran USA Construction, LLC (Respondent or Houran), alleging multiple violations of the Act. Citation 1 includes three (3) items and is classified as “serious”. This case is a simplified proceeding under the Occupational Safety and Health Review Commission Rules of Procedure Rule 202. 29 C.F.R. § 2200.202. Therefore, no complaint or answer was filed. Respondent did not assert an affirmative defense during the pre-hearing conference. 29 C.F.R. § 2200.207(b). A hearing was held on June 11, 2019. For the reasons that follow, Citation 1, Items 1, 2, and 3 are AFFIRMED.

### **Jurisdiction**

The parties have stipulated to the Commission’s jurisdiction over this proceeding and coverage under the Act. (JX-1, no. 1).<sup>1</sup> The parties have also stipulated that Houran is a New Jersey company with its principal place of business in Lyndhurst, New Jersey. (JX-1, no. 2). The evidence adduced at the hearing established that Houran was an “employer” engaged in a “business affecting commerce” within the meaning of section 3(5) of the Act, 29 U.S.C. § 652(5). The evidence supports a finding that the Act applies, and the Commission has jurisdiction over this proceeding pursuant to section 10(c) of the Act, 29 U.S.C. § 659(c).

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<sup>1</sup> JX denotes “Joint Exhibit”; CX denotes “Complainant Exhibit”; and RX denotes “Respondent Exhibit”.

### **Stipulated Facts**<sup>2</sup>

1. Jurisdiction of this action, OSHRC Docket No. 18-1261, is conferred upon the Occupational Safety and Health Review Commission by section 10(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1590, 29 U.S.C. § 651, *et seq.*).
2. Respondent, Houran USA Construction, LLC, a limited liability company organized under the laws of the State of New Jersey, maintaining its principal office and place of business at 10 Stuyvesant Ave., 2<sup>nd</sup> Floor, Lyndhurst, N.J. 07071, and doing business in the State of New Jersey, is and at all times hereinafter mentioned was engaged in residential and commercial construction and related activities.
3. Steve J. Houran is and at all relevant times was the owner and president of Respondent.
4. Respondent performed work at 193 Palisade Ave., Jersey City, N.J. 07306 (worksite) on, among other dates, May 9, 2018.<sup>3</sup>

### **Background**

Respondent, Houran USA Construction, LLC, is a New Jersey limited liability corporation engaged in residential and commercial construction and related activities. JX-1, no. 2. Steve J. Houran is the owner and president of the company. JX-1, no. 3. Respondent performed work at 193 Palisade Ave. in Jersey City, New Jersey on May 9, 2018. JX-1, no. 4. The worksite was a small renovation job on a 100-year-old historic building that involved fixing the gutters, soffits, corbels, and the installation of siding. Tr. 287-88. The building consisted of three stories. Tr. 131, 197-198; GX-2. On the outside of the building was a four-tier tubular scaffold that was wrapped around the front and right side (facing the building) of the building. Tr. 31.

### **OSHA Inspection**

On May 9, 2018, OSHA Compliance Officer (CO) Idalia Rosa Venkatraman was assigned to perform local targeting inspections for fall hazards in Jersey City. Tr. 25. In the course of

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<sup>2</sup> At the start of the hearing, the parties identified stipulated facts which the undersigned admitted into the record as Joint Exhibit no. 1 that included Stipulated Facts 1-4. Tr. 10.

<sup>3</sup> The parties' Joint Exhibit 1 erroneously references "Jersey City, N.Y." in Stipulated Fact no. 4. The undersigned correctly references the worksite as located in "Jersey City, N.J."

performing her duties, CO Venkatraman happened upon a worksite located at 193 Palisade Ave. *Id.* Initially, CO Venkatraman parked across the street from the worksite and made observations of the workers and the work being done. Tr. 26. Then, the CO took some pictures of the worksite. *Id.* At the front of the building, the CO observed a sign that read, “Houran USA Construction”. *Id.* CO Venkatraman approached an employee working outside and asked to speak to the project manager. Tr. 26. The employee went inside the building and returned with the project manager whose name was Jerry Podczerwinski (Jerry). Tr. 26-27, 31. Jerry confirmed that he was the project manager. Tr. 32, 34. The CO conducted an opening conference with Jerry. Tr. 31. Additionally, she conducted interviews with other Houran employees on the worksite including Neil Sonnicks, Jose Castro, Angel Diaz, and John Massey. Tr. 34, 37.

### **Discussion**

To prove a violation of an OSHA standard, the Secretary must show by a preponderance of the evidence that (1) the cited standard applies; (2) the employer failed to comply with the terms of the cited standard; (3) employees had access to the violative condition; and (4) the employer either knew or could have known with the exercise of reasonable diligence of the violative condition. *JPC Grp., Inc.*, 22 BNA OSHC 1859, 1861 (No. 05-1907, 2009). A preponderance of the evidence is “that quantum of evidence which is sufficient to convince the trier of fact that the facts asserted by a proponent are more probably true than false.” *Astra Pharma. Prods.*, 9 BNA OSHC 2126, 2131, n. 17 (No. 78-6247, 1981) *aff’d in relevant part*, 681 F.2d 69 (1st Cir. 1982).

#### ***Alleged Violation of 29 C.F.R. § 1926.100(a)***

Citation 1, Item 1 alleges a violation of 29 C.F.R. § 1926.100(a) which states:

[e]mployees working in areas where there is a possible danger of head injury from impact, or from falling, or from flying objects, or from electrical shock and burns, shall be protected by protective helmets.

Specifically, Citation 1, Item 1 alleges that on or about May 9, 2018, an employee working on the ground floor of the worksite was not wearing a hard hat and was exposed to a potential head injury while working below employees performing carpentry work on a scaffold. CO Venkatraman observed an employee working in front of the building picking up garbage. Tr. 49. CO Venkatraman observed, and the photographic evidence purports to show the employee walking underneath the scaffold without a hard hat. Tr. 52; CX-2. The cited standard applies.

CO Venkatraman testified that she observed Jose Castro working on the ground floor picking up garbage in front of the building. Tr. 49. She further testified that Mr. Castro was not wearing a hard hat. Tr. 52. Instead, Mr. Castro was wearing a baseball cap while walking underneath the scaffold. Tr. 58. There were employees above Mr. Castro working from the scaffold (approx. 24 feet high) using tools such as a caulking gun, hammer, and other materials. *Id.* Additionally, the scaffold was not completely planked. *Id.* CO Venkatraman testified that there was a danger of Mr. Castro being struck in the head by falling objects. *Id.* Finally, CO Venkatraman testified that there were no nets or toe boards to catch falling objects. Tr. 59. Jose Castro testified that he didn't have his hard hat on because he had just returned from a break. Tr. 243. Owner Steve Houran admitted that his employees don't like to wear hard hats because it makes them sweat. Tr. 293. Notwithstanding this defense, the standard requires employees working under these conditions to wear protective head gear. The cited standard was violated.

#### *Employee Exposure*

Employees may come within the zone of danger “while in the course of assigned working duties, personal comfort activities while on the job or their normal means of ingress-egress to their assigned workplaces.” *Gilles & Cotting, Inc.*, 3 BNA OSHC 2002, 2003 (No. 504, 1976). The Third Circuit Court of Appeals has held that an employee is exposed to a hazard if he/she has

access to the zone of danger. *Donovan v. Adams Steel Erection, Inc.*, 766 F.2d 804, 812 (3d Cir. 1985) (“ ‘access,’ not exposure to danger is the proper test”).

CO Venkatraman observed that employee Jose Castro was not wearing a hard hat even though he was walking underneath the scaffolding. Tr. 52. The CO expressed concern that an employee working on the ground below the scaffolding could be struck in the head by a falling object. Tr. 58. Mr. Castro testified that he was working 10-15 feet away from the scaffold. Tr. 238. Moreover, he initially claimed that he never passed under the scaffold. Tr. 239. However, Mr. Castro then conceded that he must have been under the scaffold at some point during the day. Tr. 240. Employee exposure to the falling/flying object hazard is established.

#### *Employer Knowledge*

The Commission has held that an employer is chargeable with knowledge of conditions which are plainly visible to its supervisory personnel. *A.L. Baumgartner Constr. Inc.*, 16 BNA OSHC 1995, 1998 (No. 92-1022, 1994). “An employee who has been delegated authority over other employees, even if only temporarily, is considered to be a supervisor for the purposes of imputing knowledge to an employer.” *Tampa Shipyards Inc.*, 15 BNA OSHC 1533, 1537 (No. 86-630, 1992) (consolidated). *Dover Elevator Co.*, 16 BNA OSHC 1281, 1286 (No. 91-862, 1993) (noting that “It is the substance of the delegation of authority that is controlling, not the formal title of the employee having this authority; an employee who is empowered to direct that corrective measures be taken is a supervisory employee.”). In *Pennsylvania Power & Light Co. v. OSHRC*, 737 F.2d 350, 352, 355 (3d Cir. 1984), the Third Circuit considered the crew leader of a three-person electrical utility crew at a remote worksite to be a supervisor for purposes of determining the employer's knowledge of the violative conditions.

Owner, Steve Houran was not at the worksite on the day of the inspection. Tr. 45. Instead,

Jerry identified himself to CO Venkatraman as the project manager on site. Tr. 32, 34. Other employees interviewed also referred to Jerry as their supervisor. Tr. 34. In rebuttal, Steve Houran testified that Jerry was just a “consultant” who happened to be on-site on the day of the inspection. Tr. 302-03. Mr. Houran further testified that Jerry was not the project manager. Tr. 304. According to Mr. Houran, the project manager was a man named Scott Adkins who was absent on the day of the inspection and he was the person in charge. Tr. 304-05. Finally, Mr. Houran testified, “to the best of my knowledge, I can’t pinpoint who was really took in (sic) charge.” Tr. 307. Mr. Houran’s statements denying that Jerry was the supervisor on May 9, 2018, are undermined by the fact that, during the inspection, Jerry instructed Angel Diaz to close the gap in the guardrail and Angel responded, “ok boss”. Tr. 82-83. In any case, Respondent’s assertions regarding the absence of a person in charge during the inspection do not negate the Secretary’s theory that Respondent had “constructive” if not “actual” knowledge of this and other violative conditions cited. Sec’y Br. 2-3, 20. To establish constructive knowledge, the Secretary must show that the employer, with the exercise of reasonable diligence, could have known of a hazardous condition. *Kerns Bros. Tree Serv.*, 18 BNA OSHC 2064, 2067 (No. 96-1719, 2000). Based on CO Venkatraman’s testimony, Mr. Castro was observed working in plain sight near or underneath the scaffold without a hard hat. CO Venkatraman also testified that Mr. Castro had to go inside the building to get the Jerry the project manager. So, it is possible that Jerry was unaware that Jose Castro was not wearing his hard hat. However, with reasonable diligence, he could have discovered this violative condition. It is noteworthy that Jerry still did not instruct Mr. Castro to put on his hard had when the CO brought it up during the closing conference. Tr. 60. In fact, CO Venkatraman only observed Jose Castro put on his hard hat as she was exiting the worksite. Tr. 62-63. It has been held that an employer has a duty “to take *reasonably* diligent measures to inspect its worksite and discover

hazardous conditions; so long as the employer does so, it is not in violation simply because it has not detected or become aware of every instance of a hazard.” *Texas A.C.A., Inc.*, 17 BNA OSHC 1048, 1051 (No. 91-3467, 1995) (citations omitted). The Commission has held that an employer is chargeable with knowledge of conditions which are plainly visible to its supervisory personnel. *A.L. Baumgartner Constr. Inc.*, 16 BNA OSHC at 1998. Assuming *arguendo*, that the undersigned accepts Mr. Houran’s contention that there was no on-site supervisor at the time of the inspection, the evidence still establishes a finding of constructive knowledge of this violation. Mr. Houran admitted that his employees don’t like to wear hard hats and sometimes work without them because the hats make them sweat. Tr. 293. With that knowledge, Jerry or Steve Houran should have been diligent about checking to make sure that all employees were wearing hard hats on the day of the inspection. Steve testified that he was nearby the worksite. 287. So, it was possible for him to return to the worksite before or during the inspection to observe Jose Castro working near and under the scaffold without a hard hat in plain sight. Whether the undersigned believes that Jerry was the site supervisor or that the supervisor was absent, the Secretary has established constructive knowledge in that a reasonably diligent employer would have inspected the worksite and observed this employee working in plain sight without a hard hat. However, the evidence of record clearly establishes that Jerry was the on-site supervisor on the day of the inspection.

The Secretary has proven, by a preponderance of the evidence, that Respondent violated 29 C.F.R. § 1926.100(a).

### *Serious Classification*

To prove a violation was “serious” under section 17(d) of the Act, 29 U.S.C. § 666(d), the Secretary must show there was a substantial probability that death or serious physical harm could have resulted from the cited condition and that the employer knew or should have known of the



condition; the likelihood of an accident occurring is not required. *Spancrete Ne., Inc.*, 15 BNA OSHC 1020, 1024 (No. 86-521, 1991). Based on her experience, CO Venkatraman testified that the injury that could have resulted from Jose Castro's failure to wear a hard hat while working near or under a scaffold could have ranged from a bump on the head to a severe laceration, concussion, or other serious injury. Tr. 58-59. The testimony regarding the serious nature of this violation is unrebutted. The Secretary has met his burden of proving that the violation alleged in Citation 1, Item 1 is properly classified as serious.

***Alleged Violation of 29 C.F.R. § 1926.451(g)(4)(i)***

Citation 1, Item 2 alleges a violation of 29 C.F.R. § 1926.451(g)(4)(i) which states:

[g]uardrail systems shall be installed along all open sides and ends of platforms. Guardrail systems shall be installed before the scaffold is released for use by employees other than erection dismantling crews.

Specifically, Citation 1, Item 2 alleges that on or about May 9, 2018, employees working on the fourth tier of a scaffold were exposed to a fall of approximately 24 feet because the scaffold was missing a guardrail. CO Venkatraman observed, and the photographic evidence shows a gap in the guardrail on the top (fourth) tier of the scaffold. Tr. 27; CX-4, 5. The cited standard applies.

Upon arrival at the worksite, CO Venkatraman observed guardrails missing from the scaffold that framed the building and an employee working on the scaffold exposed to a fall hazard of about 24 feet. Tr. 25. The CO testified that there appeared to be two rails missing from the top tier of the scaffold. Tr. 142, 165. The gap in the guardrail was approximately seven (7) feet wide.<sup>4</sup> Tr. 69. The CO noticed an employee working on the scaffold on the right side (facing the building) on the fourth tier which was missing guardrails. Tr. 49; GX-4. CO Venkatraman interviewed the

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<sup>4</sup> The CO did not take actual measurements of the gap in the guardrail; instead, she based her calculation on standard measurements. Tr. 69.

employee seen working on the scaffold, Angel Diaz, who informed her that he was performing soffit repair. Tr. 54. When the CO inquired about the missing guardrails, Jerry informed her that they were removed the day before because they were hoisting up materials. Tr. 61. Steve Houran's testimony supports Jerry's explanation regarding the missing guardrails. Tr. 298. Respondent argues that the scaffold was to be dismantled. Tr. 288. Yet, Jerry never mentioned anything about dismantling the scaffold. Tr. 298. According to Jose Castro, they finished the job on the morning of the inspection and were in the process of breaking down the scaffold to get it out of the way. Tr. 216. If true, Respondent's claim would negate a violation of this standard because dismantling a scaffold is an exception to the requirement to have guardrails. However, Respondent's argument is rejected as inconsistent with CO Venkatraman's observations and the statement of Angel Diaz regarding the work he was performing. The cited standard was violated.

#### *Employee Exposure*

CO Venkatraman testified that she observed an employee working atop the scaffold on the fourth tier with missing guard rails. Tr. 49. She confirmed her observations with an interview of the employee seen working on the scaffold. Tr. 54. Another employee, John Massey, was performing soffit repair on the left-side of the building. Tr. 40-41. He was doing his work from the roof of the adjacent building; however, he admitted that he had to access the scaffold to get to and from the other building. Tr. 41. CO Venkatraman testified that she observed an employee enter the building from the top/fourth tier of the scaffold. Tr. 49. Presumably, all employees on the scaffold were within the zone of danger which was the gap created by the missing guardrail. However, the Secretary need not show it was certain that employees would be in the zone of danger, but he must show that exposure was more than theoretically possible. *Fabricated Metal Prods., Inc.* 18 BNA OSHC 1072, 1074 (No. 93-1853, 1997); *Phoenix Roofing*, 17 BNA OSHC

1076 1079 (No. 90-2148, 1995) *aff'd*, 79 F.3d 1146 (5th Cir. 1996); *Kaspar Wire Works, Inc.*, 18 BNA OSHC 2178, 2195 (No. 90-2775, 2000) (finding that it was “ ‘reasonably predictable’ that an employee would come into contact with the unguarded belt and pulley either while attempting to reposition the fan, or inadvertently while passing nearby”), *aff'd*, 268 F.3d 1123 (D.C. Cir. 2001). Given the CO’s observations of employees working on and accessing the top tier of the scaffold where the guardrail was missing, it was reasonably predictable that those employees would be in the zone of danger. Employee exposure is established.

#### *Employer Knowledge*

The evidence is clear that both Jerry and Steve Houran were aware that the guardrails had been removed before the inspection. Tr. 61, 298. Employer knowledge is established.

The Secretary has proven, by a preponderance of the evidence, that Respondent violated 29 C.F.R. §1926.451(g)(4)(i).

#### *Serious Characterization*

CO Venkatraman testified that the employee working from the scaffold was exposed to a fall of approximately 24 feet. Tr. 25.<sup>5</sup> She also testified that the opening in the scaffold constituted an “imminent danger”. Tr. 177. CO Venkatraman further testified that a fall from a height of approximately 24 feet to the concrete below could be deadly, or at least result in broken bones. Tr. 107. The Secretary’s characterization of this violation as “serious” is established.

#### ***Alleged Violation of 29 C.F.R. § 1926.1053(b)(1)***

Citation 1, Item 3 alleges a violation of 29 C.F.R. § 1926.1053(b)(1) which states:

[w]hen portable ladders are used for access to an upper landing surface, the ladder side rails shall extend at least 3 feet (.9 m) above the upper landing surface to which

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<sup>5</sup> CO Venkatraman did not take measurements, but rather based her estimate of the height of the scaffold on her knowledge of standard scaffold sizes/measurements and the fact that the scaffold on this worksite had four tiers. Tr. 53.

the ladder is used to gain access, or, when such an extension is not possible because of the ladder's length, then the ladder shall be secured at its top to a rigid support that will not deflect, and a grasping device, such as a grabrail, shall be provided to assist employees in mounting and dismounting the ladder. In no case shall the extension be such that ladder deflection under a load would, by itself, cause the ladder to slip off its support.

Specifically, Citation 1, Item 3 alleges that, on or about May 9, 2018, employees were exposed to a ladder that extended onto the 1<sup>st</sup> floor of the house but did not extend three (3) feet over the landing.<sup>6</sup> The photographic evidence clearly shows a ladder on the worksite that does not extend three feet above the upper landing. Tr. 28-29; CX-6, 7 & 8<sup>7</sup>. The cited standard applies.

CO Venkatraman testified that there was an extension ladder inside the building extending from the ground floor to the second floor. Tr. 83. The CO recognized the ladder as a Werner extension ladder. Tr. 85. The ladder was missing the extension part that would have made it a full 20 feet in length. *Id.* Without the missing part, the ladder was approximately 13 feet in length. Tr. 171. CO Venkatraman counted the rungs of the ladder to determine its length as used at the worksite. Tr. 85. The ladder extended approximately 1 foot over the landing. Tr. 86. The height of the second floor over the ground floor was 10 feet. *Id.* According to CO Venkatraman, the ladder only extended one (1) foot over the landing because it was placed at an angle rather than perpendicular. Tr. 87. Additionally, CO Venkatraman testified that the ladder was just leaning against the landing and was not secured to anything. Tr. 86. Respondent's defense is that the ladder didn't belong to it. Tr. 227, 299. To that end, Jose Castro testified that there were subcontractors on site doing plumbing and electrical work on the day of the inspection. Tr. 210. However, CO Venkatraman did not observe any subcontractors on site during her inspection. Tr.

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<sup>6</sup> Testimony adduced at the hearing reveal that the ladder extended from the ground floor (or first floor) to the second floor of this three-story building.

<sup>7</sup> CX-8 was also designated as RX-1.

173. Also, even if there were subcontractors, Respondent Steve Houran confirmed that his company was the general contractor in charge on site. Tr. 300. Moreover, his testimony that employees understand that the ladder must be held by another helper down below supports the CO's testimony that the ladder was not secured as required by the standard. Tr. 292. The cited standard was violated.

#### *Employee Exposure*

CO Venkatraman testified that she observed an employee access the ladder during her inspection. Tr. 89. Her observation is supported by a photograph taken during the inspection. GX-6. The man observed using the ladder was an employee of Respondent as confirmed by a conversation the CO had with him and others. Tr. 90-91. Employee exposure is established.

#### *Employer Knowledge*

The project manager, Jerry, told the CO that the cited ladder was the easiest way from the first floor to the second floor. Tr. 91.<sup>8</sup> Steve Houran's testimony that employees knew they had to have a helper down below holding the ladder when using it, indicates his knowledge that the ladder was not secure. Assuming that neither Jerry nor Steve Houran (who was elsewhere at the time of the inspection) saw employees using the ladder as depicted in GX-6, both are charged with constructive knowledge because reasonable diligence would have revealed this violation in plain sight. Employer knowledge is established.

The Secretary has established, by a preponderance of the evidence, that Respondent violated 29 C.F.R. § 1926.1053(b)(1).

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<sup>8</sup> CO Venkatraman actually testified that Jerry told her the ladder was the easiest way for employees to get from the "basement" to the first floor. However, her description of the building was clarified on cross examination to reflect that there was no basement since it was at ground level and not underground thereby making this a three-story building. Tr. 197-98. Accordingly, references to a "basement" are meant to refer to the first floor.

### *Serious Characterization*

CO Venkatraman testified that an employee on the cited ladder could have lost balance/footing and fallen approximately 10 feet to the ground below thereby suffering an injury ranging from fractures to paralysis or death. Tr. 108. The Secretary's characterization of this violation as "serious" is established.

### **Penalty Determination**

The Commission, as the final arbiter of penalties, must give due consideration to the gravity of the violation and to the employer's size, history and good faith. *J.A. Jones Constr. Co.*, 15 BNA OSHC 2201, 2213-14 (No. 87-2059, 1993). These factors are not necessarily accorded equal weight, and gravity is generally the most important factor. *Trinity Indus., Inc.*, 15 BNA OSHC 1481, 1483 (No. 88-2691, 1992). The gravity of a violation depends upon such matters as the number of employees exposed, duration of exposure, precautions taken against injury, and the likelihood that an injury would result. *J.A. Jones*, 15 BNA OSHC at 2213-14. Respondent provides no argument regarding the proposed penalties, but rather makes an unsupported and oblique reference to the penalties as an "unwarranted financial hardship". Resp't Br. 7. CO Venkatraman determined the penalty factors for each of the violations affirmed as follows:

- Citation 1, Item 1: gravity<sup>9</sup> (low); employer's size (60% reduction); history (no reduction because employer had not been inspected in the past five years); and good faith (no reduction because employer did not provide copies of written safety and health plan). Tr. 111-14. The proposed penalty for this violation is \$2,217.00. Tr. 111.
- Citation 1, Item 2: gravity (high); employer's size (60% reduction); history (no reduction

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<sup>9</sup> During her testimony, CO Venkatraman referenced "severity" instead of "gravity". The undersigned takes the two to be one in the same.

because employer had not been inspected in the past five years); and good faith (no reduction because employer did not provide copies of written safety and health plan). Tr.

114. The proposed penalty for this violation is \$3,696.00. *Id.*

- Citation 1, Item 3: gravity (low); employer's size (60% reduction); history (no reduction because employer had not been inspected in the past five years); and good faith (no reduction because employer did not provide copies of written safety and health plan). Tr. 115-16. The proposed penalty for this violation is \$2,956.00. Tr. 114.

The evidence supports a finding that the penalties proposed are appropriate.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The foregoing constitutes the findings of fact and conclusions of law in accordance with Rule 52(a) of the Federal Rules of Civil Procedure.

### **ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that:

1. Citation 1, Item 1 alleging a violation of 29 C.F.R. § 1926.100(a) is AFFIRMED as issued and a penalty in the amount of \$2,217.00 is imposed.
2. Citation 1, Item 2 alleging a violation of 29 C.F.R. §1926.451(g)(4)(i) is AFFIRMED as issued and a penalty in the amount of \$3,696.00 is imposed.
3. Citation 1, Item 3 alleging a violation of 29 C.F.R. § 1926.1053(b)(1) is AFFIRMED as issued and a penalty in the amount of \$2,956.00 is imposed.

/s/  
KEITH E. BELL  
Judge, OSHRC

Dated: February 7, 2020  
Washington, D.C.

## CERTIFICATE OF SERVICE

This is to certify that a copy of the Notice/Order was sent to the parties listed below electronically using the Commission's E-Filing System on January 27, 2020.

Jeffrey Rogoff, Regional Solicitor  
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