



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.

NORTH DALLAS ACRYLIC & STUCCO, INC.,

Respondent.

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: OSHRC Docket No. 01-0727
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REMAND ORDER

This case is before the Commission on remand from the United States Court of Appeals for the Fifth Circuit. *North Dallas Acrylic & Stucco, Inc. v. OSHRC*, 51 Fed.Appx. 930 (5th Cir., No. 02-60255, Oct. 16, 2002) (table) (designated as not for publication). The court granted Respondent’s petition for review of the decision of Commission Administrative Law Judge James H. Barkley in *North Dallas Acrylic & Stucco, Inc.* (OSHRC Docket No. 01-0727, 2002 ALJ), which was not directed for review by the Commission. The judge affirmed two citation items alleging violations of two scaffolding standards, and he assessed penalties of \$250 for each item.

The Fifth Circuit stated that “it is the responsibility of the ALJ, not this court, to weigh the evidence,” and it found that the judge did not “appl[y] the proper legal standard when evaluating the evidence.” Slip op. at 4. After vacating the citation items, the court ordered: “[T]he case is REMANDED to OSHRC for further proceedings consistent with this opinion.”
Id.

Accordingly, we remand this case to Judge Barkley for further proceedings consistent with the court's opinion.

It is so ordered.

/s/ _____
W. Scott Railton
Chairman

/s/ _____
James M. Stephens
Commissioner

/s/ _____
Thomasina V. Rogers
Commissioner

Dated: June 23, 2004