

United States of America  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
1924 Building - Room 2R90, 100 Alabama Street, SW  
Atlanta, Georgia 30303-3104

Secretary of Labor,  
Complainant,  
v.  
Jesse Remodeling, LLC,  
Respondent.

OSHRC Docket No. **08-0348**

Appearances:

Leslie Brody, Esquire, Atlanta, Georgia  
For Complainant

Jesse Gamble, Ellenwood, Georgia  
For Respondent

Before: Administrative Law Judge Stephen J. Simko, Jr.

**DECISION AND ORDER**

Jesse Remodeling, LLC is engaged in construction contracting. On January 25, 2008, the Occupational Safety and Health Administration conducted an inspection of respondent's jobsite in McDonough, Georgia. Respondent timely filed a notice contesting the citation and proposed penalties. A hearing was held on May 2, 2008, in Decatur, Georgia, pursuant to Simplified Proceedings, 29 C.F.R. § 2200.200 et seq. At the hearing, the Secretary vacated Item 2 of Citation No. 1. Remaining at issue is Citation No.1, Item 1, the alleged violation of 29 C.F.R. 1926.451(g)(4)(i) and in the alternative, 29 C.F.R. § 1926.451(g)(2). For the reasons that follow, I find respondent violated 29 C.F.R. § 1926.451 (g)(4)(i) relating to one employee on the scaffold and 29 C.F.R. § 1926.451(g)(2) relating to the scaffold erection crew. A penalty of \$100.00 is assessed.

## DISCUSSION

The Secretary has the burden of proving the violation:

In order to establish a violation of an occupational safety or health standard the Secretary has the burden of proving: (a) the applicability of the cited standard, (b) the employer's non compliance with the standard's terms, (c) employee access to the violative conditions, and (d) the employer's actual or constructive knowledge of the violation (i.e., the employer knew or, with the exercise of reasonable diligence could have known, of the violative conditions).

*Atlantic Battery Co.*, 16 BNA OSHC 2131, 2138 (No.90-1747, 1994).

### **Alleged Serious Violations of 29 C.F.R. § 1926.451(g)(4)(i) and, in the alternative 29 C.F.R § 1926.451(g)(2).**

The Secretary in Citation No.1, Item 1 alleges that:

Guardrail systems were not installed along all open sides and ends of platforms:

Date: On or about Friday, January 25, 2008

Location: 1891 Jonesboro Road, McDonough, GA 30253

Equipment: Fabricated frame supported scaffold and rental rough terrain forklift

Condition: - Employees were observed engaged in masonry work on a building at heights up to 13 feet on a scaffold system with missing guardrails, toeboards and open ends and sides. During the walk around several employees were positioning concrete blocks along scaffold where guardrails were not installed to protect the employees for fall hazards.

The standard at 29 C.F.R. § 1926.451(g)(4)(i) provides:

(i) Guardrail 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.

Prior to the hearing the Secretary amended Citation No.1, Item 1 to allege in the alternative, a violation of 29 C.F.R. § 1926.451(g)(2) as follows:

Feasible fall protection was not installed for employees who were exposed to the hazard of a fall of 13 feet to the ground, due to open sides and ends of platforms, while involved in the erection of scaffolding:

(a) At the construction site - 1891 Jonesboro Road, McDonough, GA 30253. Equipment - Fabricated from supported scaffold and a rental rough terrain forklift. (All other wording of Item 1, of Citation 1, will remain as issued as well as the proposed penalty).

The standard at 29 C.F.R. § 1926.451(g)(2) provides:

(2) Effective September 2, 1997, the employer shall have a competent person determine the feasibility and safety of providing fall protection for employees erecting or dismantling supported scaffolds. Employers are required to provide fall protection for employees erecting or dismantling supported scaffolds where the installation and use of such protection is feasible and does not create a greater hazard.

Excerpts of relevant transcript pages and paragraphs, including findings of fact and conclusion of law (Tr. 153-161), are attached hereto in accordance with 29 C.F.R. § 2200.209(f).

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

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

### **ORDER**

Based upon the foregoing decision, it is ORDERED:

Citation No.1, Item 1 is affirmed as a serious violation of 29 C.F.R. §§ 1926.451(g)(4)(i) and 1926.451(g)(2). A total penalty of \$100.00 is assessed.

/s/  
STEPHEN J. SIMKO, JR.  
Judge

Date: June 2, 2006

Attachment Tr. 153-161