



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.

ARIANA MURRELL-ROSARIO d/b/a/
LIBERTY TAX SERVICE,

Respondent.

OSHRC Docket No. 21-0432

BRIEFING NOTICE

The parties are requested to brief the following issues with respect to Citation 1, Item 1:

- (1) Whether the judge erred in concluding that the alleged violation of the general duty clause, 29 U.S.C. § 654(a)(1), was not preempted by 29 C.F.R. § 1910.134. In addressing this issue, the parties should discuss the applicability of § 1910.134(a)(1) and whether under that provision, COVID-19 is an “occupational disease[] caused by breathing air contaminated with harmful dust, fogs, fumes, mists, gases, smokes, sprays, or vapors”
- (2) Whether the judge erred in affirming the alleged general duty clause violation and characterizing it as willful. Specifically, the parties should address:
 - a. Whether the Secretary established the existence of a hazard. In addressing this issue, the parties should discuss whether the record shows that the alleged hazard “arise[s] out of (that is, [has] a sufficient nexus with) the work at issue.” *Integra Health Mgmt., Inc.*, 2019 WL 1142920, at *6 (No. 13-1124, 2019).
 - b. Whether the Secretary established that the alleged hazard was “recognized as such by the employer or by general understanding in the employer’s industry.” *Roadsafe Traffic Sys., Inc.*, 2021 WL 5994023, at *4 (No. 18-0758, 2021) (internal quotation marks and brackets omitted).
 - c. Whether the Secretary established the feasibility and effectiveness of the proposed abatement measures. In addressing this issue, the parties should first discuss whether the record shows that Respondent’s existing measures to address the alleged hazard were inadequate. *Id.* at *6 (“Where an employer has

existing safety procedures, the burden is on the Secretary to show that those procedures are inadequate.” (internal quotation marks omitted)).

d. Whether the Secretary established that the alleged violation was willful.

The parties are advised that when a case is directed for review to consider either the merits or characterization of an item, the appropriateness of the penalty is also subject to review. Accordingly, the parties may address the amount of the penalty if they so choose.

All briefs are to be filed in accordance with Commission Rule 93.¹ The first brief is to be filed within 40 days of this notice. A party not intending to file a brief shall notify the Commission in accordance with Commission Rule 93. The time for filing any responsive briefs (or letters filed in lieu of briefs) shall commence on the date of service.

BY DIRECTION OF THE COMMISSION

Dated: July 13, 2022

/s/ _____
John X. Cervený
Executive Secretary

¹ The Commission requests that all briefs include an alphabetical table of authorities with references to the pages on which they are cited, and that an asterisk be placed in the left-hand margin of the table to indicate those authorities on which the brief principally relies. The Commission also requests that copies of cited authority, other than statutes, regulations, case law, law journal articles, and legal treatises, be provided to the Commission and to the opposing party. Parties should be cautioned that these materials will be considered only if appropriate.