

Secretary of Labor,

Complainant,

v.

Coastal Petroleum Services, Inc.

Respondent.

OSHRC Docket No. 00-1383

Appearances:

Carla J. Gunnin, Esq.
Office of the Solicitor
U. S. Department of Labor
Birmingham, Alabama
For Complainant

George R. Carlton, Jr., Esq.
John F. Martin, Esq.
Godwin, White & Grubar
Dallas, Texas
For Respondent

Before: Administrative Law Judge Nancy J. Spies

DECISION AND ORDER

Coastal Petroleum Services, Inc. (Coastal), operates an oil field servicing company, with its main office located in Natchez, Mississippi. On March 30, 2000, a well servicing rig that a Coastal crew was using at a well near Magnolia, Mississippi, overturned. One member of Coastal's crew was killed and another was seriously injured. Occupational Safety and Health Administration (OSHA) compliance officer Vivian Stevens investigated the accident from March 31 until April 6, 2000. As a result of Stevens's investigation, the Secretary issued a citation alleging four serious violations of the Occupational Safety and Health Act of 1970 (Act).

Item 1 of the citation alleges a serious violation of § 5(a)(1) for exposing employees to the recognized hazard of being struck by the collapsing mast of a well servicing rig. The Secretary alleges that Coastal improperly and inadequately installed the mast's guylines and anchors. Item 2 alleges another serious violation of § 5(a)(1) for exposing employees to the recognized hazard of fire and explosion due to the failure to erect a Geronimo Emergency Escape Line on the well servicing rig. At the start of the hearing, the Secretary withdrew item 3a, alleging a serious violation of § 5(a)(1) for not providing prompt medical attention (Tr. 5). Item 3b alleges a serious violation of § 1910.151(b) for failing to insure that there was a person or

persons adequately trained to render first aid when there was not a hospital, clinic, or infirmary near the worksite.

Coastal contests each of the cited items. A hearing was held in this matter on January 24, 2001, in Jackson, Mississippi. For the reasons stated below, it is determined that the Secretary failed to prove the § 5(a)(1) violations alleged in items 1 and 2 but established the violation alleged in item 3b.

Background

On March 29, 2000, Coastal sent a crew to an oil well (referred to as “the Allen well”) located off Terry Creek Road near Magnolia, Mississippi, to perform routine well servicing. Coastal planned to pull the tubing out of the wellbore, inspect it, and replace any faulty or broken tubing (Tr. 113). Coastal’s crew, which consisted of Kenneth Reese, rig operator Robbie Campbell, and floor hand Booker T. Jones, took a 1977 Wilson Mogul 42 Well Serving Rig with them to the site (Tr. 114). Supervisor Gary Randall was also present on March 29, but was not at the site on March 30, the day of the accident (Tr. 16).

The Wilson rig is a truck-mounted rig with a mast (or derrick) that can telescope to a height of 96 feet. At the top of the mast is the crown. Approximately three-quarters of the way down the mast is the racking board (also “monkeyboard” or “derrickman’s platform”). At the base of the rig is the worker’s platform or floor (Exh. C-1; Tr. 11-12, 35). Coastal’s crew “spidered” the rig, meaning they rigged guylines (also referred to as “guy wires” and “guys” at the hearing) from the rig to the ground. The crew then “killed” the well by circulating salt water through it. According to Coastal, this eliminated the possibility that any flammable substance would flow out of the well while the crew was servicing it (Tr. 145-146, 160).

The next day, the crew began working at approximately 8:30 a.m. Jones was working on the floor of the rig by the well. He heard “something make a funny sound, like a sledgehammer hitting the derrick” (Tr. 174). The rig began to topple over. Jones and Campbell managed to exit the rig and run out of the path of the falling rig, although Campbell sustained a broken leg. Reese, who had been working on the racking board, was trapped beneath the overturned derrick of the rig and sustained fatal injuries (Tr. 35, 175-176).

The Citation

Item 1: Alleged Serious Violation of § 5(a)(1)

The Secretary alleges that Coastal committed a serious violation of § 5(a)(1), which provides:

Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.

In order to establish a § 5(a)(1) violation, the Secretary must prove that:

(1) a workplace condition or activity presented a hazard, (2) the employer or industry recognized it, (3) it was likely to cause serious physical harm, and (4) a feasible and useful means of abatement existed by which to materially reduce or eliminate it.

Kokosing Construction Co. Inc., 17 BNA OSHC 1869, 1872 (No. 92-2596, 1996).

The citation alleges that Coastal's employees were exposed to the:

Hazard of being struck by collapsing structure of the mast (derrick) of a well service rig resulting from improperly and inadequately installed mast foundation, guylines and anchors on or about March 30, 2000, at the Allen well location off Terry Creek Road, near Magnolia, MS, when the employer did not follow the manufacturer's recommended specifications for the placement of the mast foundation, and safe guying of the mast to ensure adequate anchorage of the Wilson Mogul 42 Workover Rig, SN 10498, while employees performed work on the rig floor and the pipe racking board.

The Secretary contends that Coastal violated § 5(a)(1) by failing to follow the manufacturer's specifications regarding the guying pattern and the use of anchors when setting up the well servicing rig. Coastal argues that it rigged and anchored the guylines in accordance with the manufacturer's specifications.

Guylines

The Secretary introduced a copy of a section of the American Petroleum Institute's (API) recommendations to the oil well service industry regarding guylines and anchors (Exh. C-4; Tr. 23). Coastal objects that the Secretary offered a copy of the 1981 edition of API Recommended Practice (RP) 54, which has been superseded twice since its publication. Coastal contends, "An outdated, superseded twenty-year-old Recommended Practice obviously cannot constitute

evidence of what the industry *currently* recognizes as a hazard in 2000 or 2001” (Coastal’s brief, p. 6, emphasis in original). However, Coastal has not shown that the current edition of the API Recommended Practice changes the recommended practices relied upon by the Secretary. Furthermore, the section adduced by the Secretary, API RP 54 § 8.4.3, merely refers the employer to the manufacturer’s specifications (Exh. C-4):

8.4.3 The guying system for derricks and masts should be constructed in accordance with manufacturer’s guying specifications.

The Secretary introduced a copy of the manufacturer’s specification taken from a manual for a Wilson rig model different than the one at issue here. The manual states (Exh. C-9):

The proper way to guy the mast is shown on the plates on the mast. (see drawings A-53641 and A-53642, appendixes I & II) Wilson masts are of the leaning type and must be guyed for overturn stability to carry their full hook load. Use of wind guys are necessary. Guys from the bottom of the racking board (as shown on the above mentioned plate) are required to stabilize the racking board, and provide overturn stability.

Exhibit C-7 is presumably a copy of one of the plates referred to above. It states “Manufactured by WILSON MANUFACTURING CO.” and contains two diagrams--a side view of the well servicing rig and an overhead view, both with the guylines in place. The side view of the rig shows four guylines attached to the rig. Two of the guylines, running from the crown of the rig to the ground, are labeled as “A” lines. The third guyline running from the crown to the ground is labeled as “C.” The fourth guyline runs from the racking board to the ground, and is labeled “B.” The overhead diagram shows six guylines attached to the rig. Four “A” guylines run from the crown to the ground, and two “B” guylines run from the racking board to the ground. A table on the plate categorizes the guylines (Exh. C-7):

NO.	DESCRIPTION	POUNDS MINIMUM
A	Crown to Ground	32,000
B	Racking Board Guys	25,000
C	Load Guys	40,000

Stevens testified that she copied Exhibit C-7 “from a manual that we had in the [OSHA] area office” (Tr. 30). Counsel for the Secretary stated that Exhibit C-7 was not the manufacturer’s specifications for the particular Wilson rig that overturned in the present case, but was being introduced as “a guideline of the typical guying that is recommended by the manufacturer in the API standards” (Tr. 32). Stevens stated that there was no plate similar to the one copied in Exhibit C-7 on the mast of Coastal’s Wilson rig (Tr. 34). Although Stevens and counsel for the Secretary asserted at different times that the manual found in the OSHA area office and Coastal’s manual were identical (Tr. 31, 37), Stevens clarified that they were not, in fact, the same manual (Tr. 37-38): “[Coastal’s president] Newman had actually two additional drawings that correspond to this placement. They were large fold-out drawings, and we discussed the anchor placement, the use of four anchors in different zones.”

Coastal’s Wilson rig differed from the one referenced in Exhibit C-7 in mast height and in the location of the derrick platform (Tr. 60). Stevens conceded that the derrick weight and the hook load of Coastal’s rig were both “considerably lower” than those listed in Exhibit C-7 (Tr. 63). Despite the acknowledged differences between Coastal’s Wilson rig and the rig for which Exhibit C-7 was drafted (and despite the fact that the Secretary made no attempt to distinguish between a rig that requires six guylines and a rig that requires only four), the Secretary treats Exhibit C-7 as the manufacturer’s specifications for the Wilson rig that overturned in this case. The Secretary contends, “Respondent did not follow the recommended practices for guying and anchoring the rig. By not following the recommended practices, the Respondent violated § 5(a)(1) of the Act” (Secretary’s brief, p. 6). However, absent a copy of the manufacturer’s specifications for the particular model of the Wilson rig that overturned at Coastal’s site, it is not possible to determine whether or not Coastal followed the manufacturer’s specifications.

Even assuming that the Secretary established that the manufacturer’s specifications require the use of four guylines, she failed to establish her claim that Coastal used only two guylines. Stevens testified that she determined that Coastal had attached two guylines to two anchors (Tr. 94). The only witness who was actually present at the site the day of the accident was Booker T. Jones. He testified repeatedly and unwaveringly that he, Campbell, and Reese attached four wind guylines to the rig. Jones stated that the four guylines were attached to two

anchors. One set of two guylines was attached to the front of the rig, and the other set of two guylines was attached to the back. Each set came down to one anchor, forming a “V” shape (Tr. 161, 172, 183-184, 186, 198).

The Secretary attempted to impeach Jones’s testimony by using a statement that Jones had given to Stevens on March 31, the day after the accident. Coastal questioned the accuracy of the statement, noting that Stevens wrote the statement and that Jones said he did not read the statement before signing it (Tr. 196). The written statement does not, however, contradict Jones’s testimony at the hearing. The statement reads, in pertinent part (Exh. C-10, emphasis added):

Used sledge hammer to drive rod for *anchor*, Larry or Kenny may have put that *one* in over by the tree.

The Secretary argues that Jones’s use of the word “one” reveals that only one guyline was used on each side. But the only logical inference from the statement is that Jones was referring to an anchor, not a guyline, when he said “that one.” The only antecedent for the word “one” is “anchor.”¹

The Secretary also relies on two photographs Stevens took of the pine tree that Coastal used for one of its anchors (Exhs. C-5, C-6). Exhibit C-5 shows a chain wrapped around the pine tree. Because there is only one chain, the Secretary asserts that this proves that the pine tree anchored only one guyline. Jones testified without contradiction that Coastal’s crew had looped one chain around the pine tree and then attached the two guylines to the chain. The photograph shows only the chain (Tr. 162).

¹ This is not the only time that Stevens and the Secretary seemed to confuse “anchor” with “guyline,” or at least use them interchangeably. At one point, with Stevens on the stand, counsel for the Secretary responded to an objection raised by Coastal. This exchange followed (Tr. 38, emphasis added):

Secretary’s Counsel: The document pretty much spelled out the guying patterns, although I think we’ve gotten off--because all the objections, we’ve gotten off my original question which was, I was asking her what OSHA’s position would be in relation to whether or not *additional guylines* would have been helpful to prevent the mast from collapsing, and then we got an objection, but she never really answered that question.

Judge Spies: I’ll overrule the objection.

Stevens: OSHA’s position is that this particular rig would have needed *four anchors*.

The Secretary has failed to establish either that the manufacturer of the Wilson rig required the use of four guylines for the particular model used by Coastal, or that Coastal did not use four guylines.

Anchors

API RP 54 § 8.4.4 provides in pertinent part (Exh. C-4):

Guyline ground anchors should be expanding type anchors, concrete deadmen, or any other type that provides the holding strength required for the anticipated service conditions. Soil conditions, terrain, and use of surrounding land will determine the most applicable type anchor.

Stevens stated that the manufacturer's manual for the Wilson rig "calls for anchors in four locations" (Tr. 37). As noted above, the manual for the Wilson rig model in question was not adduced at the hearing. The record contains no evidence that the rig's wind guylines should have been anchored in four places rather than two.

The Secretary also asserts that it was unacceptable for Coastal to use a pine tree for one of its anchors and that the ground conditions were not suitable for holding the other anchor, a metal stake. The only evidence the Secretary has to support this theory is the testimony of Stevens, who gave her opinion that these anchors were inadequate. Stevens conceded that she had no experience in the oil field industry in general, nor in the specialized field of oil well servicing. She had inspected one well servicing rig prior to her inspection in this case (Tr. 53-54).

Coastal president Steve Newman had worked in the oil well servicing industry for 25 years at the time of the hearing (Tr. 110). He stated that it was recognized industry practice to use trees as anchors for guylines attached to well servicing rigs (Tr. 120-121). Jones, who has worked in the oil well servicing industry since 1973, also stated that it was industry practice to use trees as anchors (Tr. 164-165). Both Newman and Jones believed the metal stake was an appropriate anchor to use considering the ground conditions (Tr. 124, 165).

The Secretary perhaps would have benefited from expert testimony relating to adequate anchors for guylines attached to well servicing rigs. As the record stands, the Secretary has presented no evidence that the anchors at the Allen well site were used in contravention of either the rig manufacturer's specifications or recognized industry practice.

Item 1 is vacated.

Item 2: Alleged Serious Violation of § 5(a)(1)

_____ The Secretary alleges in the citation that Coastal's employees were exposed to:

The hazard of fire and explosion due to the failure to erect a Geronimo Emergency Escape Line with a properly installed Geronimo Emergency Escape Device at the Allen well on March 20, 2000, where the Wilson Mogul 42 workover rig, SN 10498 was in service and employee was working on the pipe racking board/monkeyboard approximately 55 feet above ground.

The first element that the Secretary must prove in a § 5(a)(1) case is that a workplace condition or activity presented a hazard. The hazards identified by the Secretary to which Coastal's employees were exposed by the failure to erect an escape line are "fire and explosion." "Hazard recognition may be shown by either the actual knowledge of the employer or the standard of knowledge in the employer's industry--an objective test." *Kokosing*, 17 BNA OSHC at 1873.

Coastal contends that no hazard of fire or explosion existed at the well site. Coastal argues (Coastal's brief, pp. 19-20; emphasis in original; citations to transcript of Newman's testimony added):

The only possible source of a fire or explosion at the site was the live well head (*i.e.*, a well under pressure) when Coastal arrived. However, Coastal's crew then proceeded to **kill the well**, *i.e.*, eliminate all pressure in the well bore by pumping brine water into the well bore (Tr. 145-146). Killing the well ensures that "the well doesn't flow" on the men at the site; the process keeps any flammable fluids or hydrocarbons from exiting the well (Tr. 146).

The killing process indicates that the well at the site was safe, with no danger whatsoever of any fire or explosion (Tr. 147). Indeed, the well had negative pressure after Coastal killed the well--the well had gone to a suction after the killing (Tr. 176-177). No gas or hydrocarbons could have escaped from the well bore, as the fluids Coastal put into the well were heavier than the gas or hydrocarbons, which simply could not punch their way through the heavier brine to get to the surface (Tr. 155).

Even if one were dubious that the method used to "kill" the well actually eliminates the hazard of fire and explosion, the Secretary offered no contradictory evidence to Coastal's position. Stevens did not appear to be familiar with the technical aspects or the consequences of killing the well (Tr. 74-77). Again, the Secretary may have helped herself by presenting expert

testimony on this issue. She did not, and the undersigned is left with the unrebutted testimony of Newman, an experienced veteran of the oil well servicing industry.

The Secretary has failed to show that a hazard of fire or explosion existed. Item 2 is vacated.

Item 3b: Alleged Serious Violation of § 1910.151(b)

The Secretary alleges that Coastal committed a serious violation of § 1910.151(b), which provides:

In the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees, a person or persons shall be adequately trained to render first aid. Adequate first aid supplies shall be readily available.

The Secretary has the burden of proving her case by a preponderance of the evidence.

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 noncompliance 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 either 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).

Coastal does not dispute that there was no infirmary, clinic, or hospital in proximity to the Allen well site. The well was approximately 6 to 8 miles from the closest hospital. To get to the site, the crew had to turn off the interstate highway onto a county road, then onto a dirt road, and then drive across a private pasture and through a gate (Tr. 47). After the rig overturned, the truck was pinned beneath it so that Jones, the only crew member not injured in the accident, had to walk to the road and flag down a vehicle for help (Tr. 48). Compliance with the cited standard requires that at least one of the crew members be adequately trained to render first aid.

Coastal claims that two of its crew members, Jones and Campbell, had received first aid training while working for Well Tech, another oil well servicing company. The Secretary established that it was more likely than not that none of the crew members had received adequate first aid training.

During the OSHA inspection, Newman told Stevens that he was not aware of any of his crew members having been trained in rendering first aid. Jones also told Stevens that he had received no first aid training (Tr. 47, 87). Stevens acknowledged that if any of the crew members had received first aid training and a Red Cross certification card while working for another company, Coastal would not be in violation of § 1910.151(b).

At the hearing, Newman stated that the members of the crew that were at the Allen well the day of the accident had worked with him for “close to ten years,” including a period of time when they had all worked for Well Tech (Tr. 127). Newman testified that Campbell and Jones received first aid training and certificate cards while at Well Tech (Tr. 127-128). Jones stated that he had worked at Well Tech for approximately 5 years. Given the chronology of his work history, it would appear that he was at Well Tech during the early 1990s (Tr. 158-159). While at Well Tech, Jones stated, he and Campbell had taken first aid training together and had received certificate cards (Tr. 159-160). When asked what happened to his card, Jones replied, “I ripped it in the oil fields. The water got it wet so many times, it just ate it away, and I just threw it away” (Tr. 160).

When cross-examined on his training, Jones became vague and evasive in his responses. He first stated that he had received training in 1981 or 1982. When confronted with the fact that he was not at Well Tech during those years, Jones stated that he may have said the wrong year (Tr. 174-175). Jones’s demeanor became defensive and his answers were non-responsive (Tr. 175-178):

Q.: What did you do to render first aid on that day the rig collapsed?

A.: I can’t hear you.²

Q.: What did you do to render first aid to your fellow coworkers the day that the rig collapsed?

A.: What did I do? I can’t hear you.

² It is noted that Jones’s difficulty in hearing the questions posed by counsel for the Secretary was markedly more pronounced when he was being cross-examined on the training issue than when being questioned regarding other issues.

Q.: What did you do the day the rig collapsed in terms of rendering first aid to your coworkers?

A.: What did I do?

Q.: Yes.

A.: I went around and got the operator out of the way from the rig, and I went around to the other side and looked for the derrickman. I couldn't find him right then. And, I ran back around there again, and I found him laid underneath the derrick. . . .

Q.: Did you do anything in first aid? Did you perform any kind of first aid to the two coworkers?

A.: I don't believe it would of did any good.

Q.: My question was, did you?

A.: Huh?

Q.: Did you?

A.: No, I did not.

* * *

Q.: From your first aid training, what did you learn you should do for people in that situation?

A.: I can't hardly hear you.

Q.: What did you learn from your first aid training that you should do for people who are injured as your coworkers were?

A.: Coworkers? Give them mouth-to-mouth and give them something like to cover their heads or something like that; what to do to them.

Q.: What is that it that you should do?

A.: Huh?

Q.: What is it that you should do for people in that situation? You said mouth-to-mouth and you said--then I couldn't understand what you said next after you said mouth-to-mouth.

A.: You asked what could I do for him?

Q.: For either one of those employees that was injured on that day, what from your first-aid training did you learn you should do?

A.: Well, it's been so long, I forgot it.

Coastal's position on this issue is undermined by the lack of credibility of Jones's testimony on the training issue, as well as the implausibility of Newman's statements. Newman attempted to blame Stevens's perception that Coastal did not have trained employees on the site on semantics (Tr. 128):

Q.: Did the compliance officer ask you if these people had had training?

A.: Yes, sir.

Q.: What was the question?

A.: "Have you trained your people in first aid?"

Q.: And, I suppose your answer was you had not?

A.: I had not.

Q.: Did she go any further than that?

A.: No, sir.

This questionable rationale for failing to inform Stevens that Coastal's employees had received training was weakened upon cross-examination (Tr. 140-142):

Q.: Why is it that when Ms. Stevens asked you specifically about first aid training, you didn't tell her they have been trained?

A.: I assumed that Ms. Stevens meant had I furnished them training, and as I recall, I think that's what she asked me, had I furnished them training at my company?

* * *

Q.: Did you ever later in communications with Ms. Stevens mention to her about the training?

A.: No, ma'am.

Judge Spies: Did she talk to you in what she would call a closing conference and tell you what she thought the violations were?

A.: I'm sorry?

Judge Spies: Did she have something with you that she might call a closing conference where she tells you what the violations are in her opinion?

A.: We had a closing conference.

Judge Spies: Did she bring up the fact that she didn't think anyone was trained?

A.: No, ma'am. She asked me, as I previously stated, had I not furnished safety training and I said, "no," because I had not.

Q.: When you received the citation, why didn't you tell the OSHA Jackson Area Office that your employees were, in fact, trained; that they had received first-aid training?

A.: Why didn't I call the office and tell them?

Q.: Yes.

A.: I didn't think about it.

Newman's failure to inform Stevens during her inspection that Jones and Campbell had received training, and Jones's equivocation (and lack of familiarity with basic principles of first aid) raise doubts about Coastal's claim that any such training took place. The citation was issued on July 13, 2000. The hearing was held more than 6 months later, on January 24, 2001. During that time, Coastal could have contacted either Well Tech or the local Red Cross chapter to secure documentation of Jones's training.

The undersigned finds Stevens's testimony that Newman told her he was unaware of any training provided to Coastal's crew and that Jones told her that he had not received first aid training to be credible. The undersigned does not credit Newman's testimony that he misunderstood Stevens's question, nor does she credit Jones's claim that he had received first aid training from Well Tech. Failure to provide first aid training to employees who are working in

an area remote from a hospital, infirmary, or clinic could mean the difference between life and death for an injured employee. Item 3b is affirmed as serious.

Penalty Determination

The Commission is the final arbiter of penalties in all contested cases. In determining an appropriate penalty, the Commission is required to consider the size of the employer's business, history of previous violations, the employer's good faith, and the gravity of the violation. Gravity is the principal factor to be considered.

Coastal employed 15 employees at the time of the accident (Tr. 51). No evidence was presented regarding whether Coastal had a history of OSHA violations. Coastal's failure to provide its own first aid training for its employees, or to keep records of employees who may have been trained on previous jobs shows a lack of good faith on Coastal's part. The gravity of the violation is high. An injured employee in a remote location, without radio or telephone contact available, could die or sustain more serious injuries in the absence of a person trained to administer mouth-to-mouth resuscitation or CPR, to stop bleeding, to treat shock, or to perform other skills taught in a basic first aid course. It is determined that a penalty of \$2,000.00 is appropriate for the violation of § 1910.151(b).

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 hereby ORDERED that:

1. Item 1, alleging a serious violation of § 5(a)(1), is vacated, and no penalty is assessed;
2. Item 2, alleging a serious violation of § 5(a)(1) is vacated, and no penalty is assessed;
3. Item 3a, alleging a serious violation of § 5(a)(1), is withdrawn by the Secretary, and no penalty is assessed; and

4. Item 3b, alleging a serious violation of § 1910.151(b), is affirmed, and a penalty of \$2,000.00 is assessed.

/s/
NANCY J. SPIES
Judge

Date: May 24, 2001