

SECRETARY OF LABOR,  
Complainant,

v.

RODRIGUEZ CORNICE CONSTRUCTION CO.  
and its successors,  
Respondent.

OSHRC DOCKET  
NO. 00-1943

APPEARANCES:

Susan Meyercord, Esq., Office of the Solicitor, U.S. Department of Labor,  
Dallas, Texas

Before: Administrative Law Judge Sidney J. Goldstein

DECISION AND ORDER

After a compliance officer for the Occupational Safety and Health Administration inspected a worksite of the Rodriguez Cornice Construction Company, that Agency issued it a citation for the alleged violations of safety regulations adopted under the Occupational Safety and Health Act of 1970. The Respondent disagreed with the citation and filed a notice of contest. Thereafter a complaint and answer were filed with this Commission, and a hearing was scheduled for April 2, 2001, in Dallas, Texas. At the time and place of the hearing the Complainant appeared prepared for trial. However, neither the Respondent nor a representative on its behalf appeared at the proceedings or requested a postponement thereof.

At the hearing the compliance officer testified that he inspected a workplace of the Respondent on June 6, 2000, and observed its employees exposed to a fall hazard of approximately 21 feet to the ground below without guardrails or personal fall arrest systems. According to its employees, they did not receive frequent and regular inspections in violation of the regulation at 29

CFR §1926.20(b)(2) which requires that the employer shall provide for frequent and regular inspections of jobsites by a competent person.

Citation 1, items 2a and 2b charged, and the inspector observed, that Respondent's employees working from pump jack scaffold and/or job-made scaffold more than 10 feet above ground were not protected from falling by the use of guardrail systems or personal fall arrest systems. The inspector considered this to be a violation of the regulation at 29 CFR §1926.451(g)(1)(vii) which provides that each employee shall be protected by the use of personal fall arrest systems or guardrail systems meeting specified requirements.

With respect to item 3 of Citation 1, the compliance officer testified that untrained employees installing trim (cornice) working approximately 21 feet above ground were not trained in violation of the regulation at 29 CFR §1926.454(a). This regulation requires that the employer shall have each employee who performs work while on a scaffold be trained by a person qualified in the subject matter to recognize the hazards associated with the type of scaffolding being used. Employees informed the officer that they received no training in this regard.

With regard to Citation 1, item 4, the compliance officer testified that he observed an employer's stairway with four or more risers unprotected in violation of the regulation at 29 CFR §1926.1052(c)(1)(ii) which requires that stairways with four or more risers shall be equipped with a stair rail system along each unprotected side or edge.

Finally, in Citation 1, item 5, the inspector noted that a Respondent's ladder did not extend at least three feet above an upper landing surface as required by the regulation at 29 CFR §1926.1053(b)(1) which provides that when portable ladders are used for access to an upper landing surface, the ladder side rails shall extend at least three feet above the upper landing surface to which the ladder is used to gain access.

In his testimony the compliance officer also explained how the penalties were compiled in consonance with the statute.

On the basis of the uncontradicted testimony of the compliance officer and the photographs which verified his remarks, I find that the Respondent was in violation of Items 1, 2, 3, 4 and 5 of Citation No. 1. The citation, including recommended penalties of \$7,500,00, is AFFIRMED.

/s/  
Sidney J. Goldstein  
Judge, OSHRC

Dated: July 2, 2001