

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.

Fern Valley Excavating, Inc.,

Respondent.

OSHRC Docket No. **07-1498**

Appearances:

Patrick L. DePace, Esquire., U. S. Department of Labor, Office of the Solicitor, Cleveland, Ohio  
For Complainant

David Leneghan, Esquire, Broadview Heights, Ohio  
For Respondent

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

**DECISION AND ORDER**

Fern Valley Excavating, Inc. (Fern Valley) is engaged in excavation contracting and landscaping. On April 26, 2007, the Occupational Safety and Health Administration conducted an investigation of a jobsite in Parma, Ohio. This investigation concerned working conditions relating to an accident at that worksite on April 26, 2007. Respondent timely filed a notice contesting the citation and proposed penalties. A hearing was held, pursuant to Simplified Proceedings, 29 C.F.R. § 2200.200 et seq., in Cleveland, Ohio, on February 5, 2008. The threshold issue to be decided is whether Respondent was the employer of workers on this jobsite on April 26, 2007, the date of this accident. For the reasons that follow, I find Respondent was not an employer on that site on that date. All alleged violations are vacated and no penalty is assessed.

Excerpts of relevant transcript pages and paragraphs, including findings of fact and conclusions of law (Tr. 174 - 183), are attached hereto in accordance with 29 C.F.R. § 2200.209(f).

**FINDINGS OF FACT AND CONCLUSION 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, Items 1, 2, 3 and 4 are vacated and no penalty is assessed.

/s/ \_\_\_\_\_  
STEPHEN J. SIMKO, JR.  
Judge

Date: February 29, 2008

Attachment Tr. 174 - 183