



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1825 K STREET NW
4TH FLOOR
WASHINGTON, DC 20006-1246

FAX
COM (202) 634-4008
FTS (202) 634-4008

SECRETARY OF LABOR
Complainant,

v.

L T PRECISION HEAT TREATING/PRECISIO
Respondent.

OSHRC DOCKET
NO. 92-1120

NOTICE OF DOCKETING
OF ADMINISTRATIVE LAW JUDGE'S DECISION

The Administrative Law Judge's Report in the above referenced case was docketed with the Commission on March 24, 1993. The decision of the Judge will become a final order of the Commission on April 23, 1993 unless a Commission member directs review of the decision on or before that date. **ANY PARTY DESIRING REVIEW OF THE JUDGE'S DECISION BY THE COMMISSION MUST FILE A PETITION FOR DISCRETIONARY REVIEW.** Any such petition should be received by the Executive Secretary on or before April 13, 1993 in order to permit sufficient time for its review. See Commission Rule 91, 29 C.F.R. 2200.91.

All further pleadings or communications regarding this case shall be addressed to:

Executive Secretary
Occupational Safety and Health
Review Commission
1825 K St. N.W., Room 401
Washington, D.C. 20006-1246

Petitioning parties shall also mail a copy to:

Daniel J. Mick, Esq.
Counsel for Regional Trial Litigation
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Avenue, N.W.
Washington, D.C. 20210

If a Direction for Review is issued by the Commission, then the Counsel for Regional Trial Litigation will represent the Department of Labor. Any party having questions about review rights may contact the Commission's Executive Secretary or call (202) 634-7950.

FOR THE COMMISSION

Ray H. Darling, Jr.
Executive Secretary

Date: March 24, 1993

DOCKET NO. 92-1120

NOTICE IS GIVEN TO THE FOLLOWING:

Daniel J. Mick, Esq.
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200 Constitution Ave., N.W.
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Patricia Rodenhausen, Esq.
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Robert Mansfield, Director of
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L T Precision Heat Treating
d/b/a Precision Metal
259 Monitor Street
Brooklyn, NY 11222

Irving Sommer
Chief Administrative Law Judge
Occupational Safety and Health
Review Commission
Room 417/A
1825 K Street, N.W.
Washington, DC 20006 1246

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SECRETARY OF LABOR,

Complainant,

v.

LT PRECISION HEAT TREATING
 d/b/a PRECISION METAL,

Respondent.

Docket No. 92-1120

Appearances:

Luis Micheli, Esq.
 Department of Labor
 Office of the Solicitor
 New York, New York
 For the Complainant

Bob Mansfield
 Director of Engineering
 LT Precision
 Brooklyn, New York
 For the Respondent

Before: Administrative Law Judge Irving Sommer

DECISION AND ORDER

Following an OSHA inspection of Respondent's place of business at 259 Monitor Street, Brooklyn, New York, the Secretary of Labor (Secretary) issued to the Respondent LT Heat Treating d/b/a Precision Metal (LT) two citations charging serious and other than serious violations of the Act. Prior to the hearing a number of the items charged were disposed of by the parties with the following issues remaining for resolution: Whether there was a serious violation of 29 C.F.R. 1910.215(a)(4) and 29 C.F.R. 1910.215(b)(9). A hearing was held in New York, New York. Both sides were represented and filed posthearing briefs. No jurisdictional issues are in dispute.

BACKGROUND

LT Precision is a New York corporation with its principal place of business at 259 Monitor Street, Brooklyn, New York. During the period at issue it was engaged in metal heat treating and chemical conversion coating.

ALLEGED VIOLATIONS

Serious Citation No. 1, item 2 alleges:

29 C.F.R. 1910.215(a)(4): Grinding machinery was not used with work rests to support off-hand grinding work:

Location: Shipping room- A Black & Decker model 9403 bench grinder was used for offhand grinding, without a tool rest on or about 12/16/91.

The cited standard provides:

1910.215-Abrasive wheel machinery.

(a) General requirements-(4) Work rests. On offhand grinding machines, work rests shall be used to support the work. They shall be of rigid construction and designed to be adjustable to compensate for wheel wear. Work rests shall be kept adjusted closely to the wheel with a maximum opening of one-eighth inch to prevent the work from being jammed between the wheel and the rest, which may cause wheel breakage. The work shall be securely clamped after each adjustment. The adjustment shall not be made with the wheel in motion.

Serious citation No. 1, item 3 alleges:

29 C.F.R. 1910.215(b)(9): The distance between the abrasive wheel peripherys and adjustable tongue or the end of the safety guard peripheral at the top exceeded one-fourth inch:

Location: Shipping room- A Black & Decker model 9403 bench grinder had its tongue guard adjusted such that it was 3/4 inch from the wheel. On or about 12/16/91.

The cited standard provides:

1910.215(b)-Guarding of abrasive wheel machinery

(9) Exposure adjustment. Safety guards of the types described in subparagraphs (3) and (4) of this paragraph, where the operator stands in front of the opening, shall be so constructed so that the peripheral protecting member can be adjusted to the constantly decreasing diameter of the wheel. The maximum angular exposure above the horizontal plane of the wheel spindle as specified in paragraphs (3) and (4) of this section shall never be exceeded, and the distance between the wheel periphery and the adjustable tongue or the end of the peripheral member at the top shall never exceed one-fourth inch.

Alleged Violations of Sections 1910.215(a)(4) & 1910.215(b)(9)

Both citations rest on the finding by the compliance officer that the guards on the bench grinding machine being used by the Respondent were in violation of the standards. He found and the Respondent admits that the tongue guard which is required to be adjusted within 1/4 inch of the grinding wheel was 3/4 inches away. (T 14-15,40). Similarly, the compliance officer found that the work rest guard which is required to be no more than 1/8th inch from the grinder wheel was approximately 5 inches away being "pivoted completely away from the wheel" and "in essence the grinder had no tool rest" (T 17, 19, 20). The Respondent admitted to this finding and that in effect there was no work rest, but alleged no guards were needed since the Respondent was not doing off hand grinding work but was engaged in "spark testing". He alleged that in "spark testing" the operator stands on the side of the machine and lightly touches the metal being tested to the wheel for an instant, with the ensuing sparks giving him an indication of the makeup of the metal, and this is not grinding activity. Respondent alleges that such activity is not within the purview of the standard since no grinding activity is carried out. This argument is without merit. It is accepted that one of the definitions of grinding is the rubbing of two surfaces together. See American Heritage Dictionary of the English Language, 1976 Edition, page 580. The

use of the grinding wheel for any type of work activity subjects the operator to various hazards such as flying chips, sparks, shattering of the wheel etc., which can cause serious injuries to the face or other parts of the body. To protect against such hazards the standard requires the guards which are mandated under the sections cited herein, and which the Respondent did not adhere to. The allegation that "spark testing" is not a hazard is completely eroded by the testimony of Respondent's witnesses admitting that the grinding wheel can explode and shatter (T37) and that there are hazards when the wheel is used.(T 41). In short, the process used by the Respondent without the guards as found herein placed its employee at a hazard of serious injury from flying parts, wheel breakage, etc. The preponderance of the credible evidence shows the Respondent violated 29 C.F.R. 1910.215 (a)(4) and 1910.215(b)(9), and I so find. If the Respondent believes that "spark testing" cannot be carried out with the guarding requirements called for in the standard, it should apply for a variance and not continue to suffer its employees unsafe working conditions in such job activity. Such variance procedure is the proper cause of action the Respondent should follow and not non-compliance with the standards.

Penalty

The Secretary has proposed a penalty of \$1050 for the violation of 1910.215(a)(4) and \$600 for the violation of 1910.215 (b)(9). In determining the appropriateness of a proposed penalty the Commission is required to give due consideration to the size of the employer, and the employers' good faith and history of previous violations; however, the gravity of the offense is the principal factor to be considered. In this case the gravity is less than moderate inasmuch as only one employee is concerned, and the activity takes place for about 3 minutes a day; furthermore there is no previous history of violations noted, and the Respondent was shown to have fully cooperated herein. Taking into consideration all the factors enumerated it is appropriate that the penalty for the violation of 1910.215(a)(4) be set at \$250 and the penalty for the violation of 1910.215 (b)(9) be set at \$150 or a total penalty of \$400.

Findings of Fact

All findings of fact relevant and necessary to a determination of the contested issues have been found specially and appear in the decision above. See Rule 52(a) of the Federal

Rules of Civil Procedure. Proposed Findings of Fact that are inconsistent with this decision are denied.

Conclusions of Law

1. LT Precision Heat Treating d/b/a Precision Metal was in violation of 29 C.F.R. 1910.215 (a)(4) and 29 C.F.R. 1910.215 (b)(9), which were both properly categorized as serious violations.

ORDER

1. Serious citation 1, item 2 which alleges a violation of 29 C.F.R. 1910. 215 (a)(4) is AFFIRMED and a penalty of \$250 is ASSESSED.

2. Serious citation 1, item 3 which alleges a violation of 29 C.F.R. 1910.215 (b)(9) is AFFIRMED and a penalty of \$150 is ASSESSED.

3. The total penalty ASSESSED is \$400.



IRVING SOMMER
Judge

DATED: MAR 22 1993
Washington, D.C.