

United States of America  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
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Secretary of Labor, :  
Complainant, :  
v. :  
W. G. Kees Properties, Inc., :  
Respondent. :

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OSHRC Docket No. **97-1515**

Appearances:

Karen E. Mock, Esquire  
Office of the Solicitor  
Department of Labor  
Atlanta, Georgia  
For Complainant

John B. Campbell  
William G. Kees  
W. G. Kees Properties, Inc.  
Alpharetta, Georgia  
For Respondent

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

**DECISION AND ORDER**

This proceeding arises under §10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651, *et seq* (“the Act”) to review a citation issued by the Secretary of Labor pursuant to § 9(a) of the Act and a proposed assessment of penalty thereon issued pursuant to § 10(a) of the Act.

On July 18, 1997, W.G.Kees Properties, Inc. was issued a citation alleging serious violations of construction standards contained in 29 C.F.R. Part 1926.

Prior to hearing, the Secretary withdrew item 1 of Citation No.1. Items 2 through 5 read as follows:

Citation No. 1, Item 2a

29 C.F.R. § 1926.501(b)(11): Each employee on a steep roof with unprotected sides and edges 6 feet (1.8m) or more above lower levels was not protected from falling by guardrail systems with toeboards, safety net systems, or personal fall arrest systems:

a) At the structure, employees working on a roof with eave to ground heights of greater than 10 feet were not using slide guards (2x6) or equivalent fall protective devices when installing shingles on a 8x12 pitched roof.

Citation No. 1, Item 2b

29 C.F.R. § 1926.501(b)(15): Each employee on a walking/working surface 6 feet (1.8m) or more above lower levels was not protected from falling by a guardrail system, safety net system, or personal fall arrest system:

a) At the structure, wall opening and walking/working surfaces on the second level which were 6 feet above the lower level, where employees were exposed to fall hazards were not equipped with standard guardrail or other fall protective devices.

Citation No. 1, Item 2c

29 C.F.R. § 1926.1053(b)8): Ladders placed on a location where they could be displaced by workplace activities or traffic, such as in passageways, doorways, or driveways, were not secured to prevent accidental displacement, nor was a barricade used to keep the activities or traffic away from the ladder:

a) At the structure, ladders used by employees to gain access to the roof area were not secured against accidental displacement.

Citation No. 1, Item 3a

29 C.F.R. § 1926.1052(c)(1): Stairways having four or more risers or rising more than 30 inches (76cm), whichever is less, were not equipped with one handrail or one stairrail system along each unprotected side or edge:

a) In the structure, a stairway with 15 risers was not equipped with a handrail on each unprotected side.

Citation No. 1, Item 3b

29 C.F.R. § 1926.1053(b)(1): Portable ladders were used for access to an upper landing surface and the ladder side rails did not extend at least 3 feet (.9m) above the upper landing surface to which the ladder was used to gain access.

a) At the structure, ladders used by employees to gain access to the roof area did not extend at least 3 feet (.9m) above the surface landing on the roof to which the ladder was used to gain access.

Citation No. 1, Item 4

29 C.F.R. § 1926.405(a)(2)(ii)(I): Flexible cords and cables used for temporary wiring were not protected from damage.

- a) At the structure, electrical power cords placed in the roadway and used to supply temporary electrical power for hand tools was not elevated or covered. Cords were damaged and energized wires were exposed and accessible to contact by employees.

Citation No. 1, Item 5a

29 C.F.R. § 1926.100(a): Employees were not protected by protective helmets while working in areas where there was a possible danger of head injury from impact, or from falling or flying objects, or from electrical shock and burns.

- a) At the structure, employees working in and around the building at lower levels subject to head injuries from falling objects were not required to wear hard hats.

Citation No. 1, Item 5b

29 C.F.R. § 1926.95(a): Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers were not provided, used, or maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.

Protective shoes were not work at the site where the employees were exposed to being struck by or impaled by building materials or equipment.

Respondent filed a timely notice of contest and this matter was assigned for E-Z Trial proceedings pursuant to Commission Rules 29 C.F.R. § 2200.200 *et seq.* A hearing was conducted on December 16, 1997, in accordance with Commission Rule 209(f). A decision was issued from the bench affirming the serious violations as alleged and assessing penalties totalling \$1,100.00 as follows:

<b>Item No.</b>	<b>Penalty</b>
2a, 2b and 2c	\$600.00
3a and 3b	\$300.00
4	\$100.00

<b>Item No.</b>	<b>Penalty</b>
5a and 5b	\$100.00

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

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 ORDERED:

1. Items 2a, 2b and 2c; 3a and 3b; 4; and 5a and 5b of Citation No. 1 are affirmed as serious violations and penalties totalling \$1,100.00 are assessed.

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STEPHEN J. SIMKO, JR.  
Judge, OSHRC

Date: