
Secretary of Labor, :
Complainant, :
v. :
Equity Residential Development :
Corporation, :
Respondent. :

OSHRC Docket No. 97-1838

EZ

Appearances:

Maureen Cafferkey, Esquire
Office of the Solicitor
U. S. Department of Labor
Cleveland, Ohio
For Complainant

Ms. Linda Radcliff
LRR and Associates
Buckeye Lake, Ohio
For Respondent
(No Appearance)

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 September 27, 1997, Equity Residential Development Corporation (Equity) was issued a citation alleging serious violations of construction standards contained in 29 C.F.R. Part 1926.

Items 1 and 2 of Citation No. 1 read as follows:

Citation No. 1, Item 1

29 CFR 1926.20(b)(2): The employer did not initiate and maintain a program that provided for frequent and regular inspections of the jobsite, materials and equipment, by competent persons designated by the employer: (A competent person is defined as one who is capable of identifying existing and predictable hazards in the surrounding or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them):

- a) The employer failed to ensure a competent person performed frequent and regular inspections of their jobsite as workers were observed performing roofing work without a personal fall arrest system who were subject to a fall of 10.3 feet, which was not identified and corrected during inspection of the jobsite.

Citation No. 1, Item 2

29 CFR 1926.503(c): “Retraining.” When the employer had reason to believe that any affected employee who had already been trained did not have the understanding and skill required by paragraph (a) of this section, the employer did not retrain each such employee. Circumstances where retraining is required include, but are not limited to, situations where:

- (1) Changes in the workplace render previous training obsolete; or
 - (2) Changes in the types of fall protection systems or equipment to be used render previous training obsolete; or
 - (3) Inadequacies in an affected employee’s knowledge or use of fall protection systems or equipment indicate that the employee has not retained the requisite understanding or skill.
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- a) The employer failed to ensure each employee, who had already been trained had the understanding and skill required by paragraph (a) of this section, was retrained, as the site superintendent was unfamiliar with the specific requirements for alternative means of fall protection (slide guards and required placement), in lieu of conventional systems for fall protection.

Equity filed a timely notice of contest, and this matter was assigned for EZ trial proceedings in accordance with 29 C.F.R. § 2200.200, *et seq.* A hearing was held in Columbus, Ohio, on June 11, 1998, in accordance with 29 C.F.R. § 2200.209(f). The Secretary was represented by her

attorney, Maureen Cafferkey. Respondent did not appear at the hearing and its representative, Linda Radcliff, also failed to appear at the hearing.

The Secretary's attorney moved for default judgment against Equity, and in favor of the Secretary when neither Equity nor its representative appeared at the hearing. She advised the judge of the sequence of events that occurred prior to the hearing in this matter.

The Secretary presented evidence relating to the alleged violations and proposed penalties. She established her right to relief by evidence satisfactory to the judge. At the conclusion of the presentation of this evidence, a decision and order was issued from the bench granting the Secretary's motion for default judgment affirming the serious violations as alleged and assessing penalties totaling \$3,000 as follows:

<u>Item No.</u>	<u>Assessed Penalty</u>
1	\$1,500
2	\$1,500

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. The Secretary's motion for default judgment against Equity, and in favor of the Secretary, is **GRANTED**.

2. Items 1 and 2 of Citation No. 1 are affirmed as serious violations and penalties totaling \$3,000 are assessed.

STEPHEN J. SIMKO, JR.
Judge

Date: June 17, 1998