

SECRETARY OF LABOR,

Complainant,

v.

GRAYHAWK OF AMERICA, INC.,

Respondent.

OSHRC Docket No. 98-1379

APPEARANCES:

For the Complainant:

Kim Prichard Flores, Esq., Office of the Solicitor, U.S. Department of Labor, Kansas City, Missouri.

Before: Administrative Law Judge Sidney J. Goldstein

DECISION AND ORDER

In this action the Secretary of Labor seeks to affirm a serious citation issued to Grayhawk of America, Inc. by the U.S. Occupational Safety and Health Administration for the alleged violation of four safety regulations relating to the construction industry. The matter arose after a compliance officer for the Administration inspected a worksite of this employer, concluded that it was in violation of the regulations, and recommended that the citation be issued. The company disagreed with this determination and filed a notice of contest. Pursuant to Commission's Rules, the Chief Judge designated this case to be conducted under E-Z trial rules.

The citation charged that the Respondent violated safety regulations in that (1) employees were not protected by helmets while working where there was a danger of head injury; (2) employees did not use eye and face protective equipment when machines or operations presented the possibility of eye or face injury; (3) employees working on a surface six feet or more above a lower floor were not protected from falling by the use of a guardrail, safety net, or personal fall arrest systems; and (4) employees on a working surface were not protected from falling through holes, including skylights more than six feet above lower levels by personal fall arrest systems, covers, or guardrails erected around such holes.

A hearing was scheduled for January 5, 1999, and notices of hearing were mailed to the Complainant and the Respondent. At the time and place scheduled for hearing the Complainant appeared prepared for trial. The Respondent neither appeared nor requested a postponement of the proceedings.

At the hearing the compliance officer who investigated the worksite testified that he saw employees setting walls on the deck of the building and were exposed to injury from the walls falling on them without the benefit of hard hats. With respect to item 2 of the citation he saw two employees using pneumatic nail guns without eye and face protection. He was concerned that nails coming out of the guns with strong force could cause injury to the eye or face if misdirected. He also said that item 3 of the citation was violated in that employees were working approximately ten feet above a lower level without guardrails or a safety net system. Finally, employees were working around unguarded floor openings, including stairwells, future stairwells, and an elevator shaft. Employees in these instances were subject to a fall of up to fourteen feet.

Thus, the Respondent violated the regulations found at 29 C.F.R. §1926.100(a); §1926.102(a)(1); §1926.501(b)(1), and §1926.501(b)(4)(i).

In each instance employees were subject to severe injury or death, and for that reason the violations were listed as "Serious." The penalties recommended were consistent with the requirements of the Occupational Safety and Health Act of 1970.

Inasmuch as the Complainant proved that the Respondent was in violation of the regulations indicated, and since the Respondent did not attend the hearing or request a postponement of the matter:

Citation 1, item 1, 29 C.F.R. §1926.100(a) is AFFIRMED with a penalty of \$225.00.

Citation 1, item 2, 29 C.F.R. §1926.102(a)(1) is AFFIRMED with a penalty of \$300.00.

Citation 1, item 3, 29 C.F.R. §1926.501(b)(1) is AFFIRMED with a penalty of \$1,500.00.

Citation 1, item 4, 29 C.F.R. §1926.501(b)(4)(i) is AFFIRMED with a penalty of \$1,500.00.

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Sidney J. Goldstein  
Judge, OSHRC

Dated: