



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

ONEKEY, LLC,

Respondent.

OSHRC Docket No. 18-0242

BRIEFING NOTICE

The parties are requested to brief the following issues:

- (1) With respect to Willful Citation 2, Item 1, whether the judge erred in imputing the knowledge of Respondent's supervisors given relevant precedent from the U.S. Court of Appeals for the circuit in which the company is headquartered. *See* 29 U.S.C. § 660(a) (employer may appeal to circuit where violation is alleged to have occurred, employer has its principal office, or D.C. Circuit); *Pa. Power & Light Co. v. OSHRC*, 737 F.2d 350 (3d Cir. 1984) (“[I]n a case where the inference of employer knowledge is raised only by proof of a supervisor’s misconduct,” that misconduct “will not, standing alone, end the inquiry into foreseeability.”).
- (2) With respect to Willful Citation 2, Item 2, whether the judge erred in concluding that the Secretary established Respondent’s knowledge of the cited hazard. *See Burford’s Tree, Inc.*, 22 BNA OSHC 1948, 1950 (No. 07-1899, 2010) (“To establish a violation of the general duty clause, the Secretary must prove, in addition to the four elements not in dispute here, that the employer knew or, with the exercise of reasonable diligence, could have known of the hazardous condition.”).
- (3) With respect to Willful Citation 2, Items 1 and 2, whether the judge erred in affirming the violations as willful.

The parties are advised that when a case is directed for review to consider either the merits or characterization of an item, the appropriateness of the penalty is also subject to review. Accordingly, the parties may address the amount of the penalty if they so choose.

All briefs are to be filed in accordance with Commission Rule 93.¹ The first brief is to be filed within 40 days of this notice. A party not intending to file a brief shall notify the Commission in accordance with Commission Rule 93. The time for filing any responsive briefs (or letters filed in lieu of briefs) shall commence on the date of service.

BY DIRECTION OF THE COMMISSION

Dated: February 18, 2021

/s/ _____
John X. Cervený
Executive Secretary

¹ The Commission requests that all briefs include an alphabetical table of authorities with references to the pages on which they are cited, and that an asterisk be placed in the left-hand margin of the table to indicate those authorities on which the brief principally relies. The Commission also requests that copies of cited authority, other than statutes, regulations, case law, law journal articles, and legal treatises, be provided to the Commission and to the opposing party. Parties should be cautioned that these materials will be considered only if appropriate.