

SECRETARY OF LABOR,

Complainant,

v.

ACCU-RATE ROOFING CO.,

Respondent.

OSHRC DOCKET NO. 99-0240

APPEARANCES:

For the Complainant:

Helen J. Schuitmaker, Esq., Office of the Solicitor, U.S. Department of Labor, Chicago, Illinois

Before: Administrative Law Judge: Stanley M. Schwartz

DECISION AND ORDER

This proceeding arises under the Occupational Safety and Health Act of 1970 (29 U.S.C. Section 651 *et seq.*; hereafter called the "Act").

Respondent, Accu-Rate Roofing Co. (Accu-Rate), at all times relevant to this action maintained a place of business on Burlington Road, Union Grove, Wisconsin, where it was engaged in roofing. Respondent admits it is an employer engaged in a business affecting commerce and is subject to the requirements of the Act.

On November 6, 1998 the Occupational Safety and Health Administration (OSHA) conducted an inspection of Accu-Rates Burlington Road work site. As a result of that inspection, Accu-Rate was issued citations alleging violations of the Act together with proposed penalties. By filing a timely notice of contest Accu-Rate brought this proceeding before the Occupational Safety and Health Review Commission (Commission).

In June, 1999, the parties reached an oral agreement to settle the above captioned action; however, the written settlement agreement was not signed by Accu-Rate, and the matter was set for hearing. Prior to the hearing Accu-Rate filed for and received a discharge in bankruptcy (Tr. 5, 24; Exh. C-1).

On November 3, 1999, an E-Z trial hearing was held in Milwaukee. Accu-Rate did not appear. The Secretary set forth her *prima facie* case on the record, and this matter is ready for disposition.

Alleged Violations

Serious citation 1, item 1a alleges:

29 CFR 1926.503(a)(1): The employer shall provide a training program for each employee who might be exposed to fall hazards in accordance with CFR 1926 Subpart M-Fall Protection.

- (a) The employer did not provide training to all employees who were exposed to a fall hazard.

Serious citation 1, item 1b alleges:

29 CFR 1926.1060(a): The employer did not provide a training program for each employee using ladders and stairways which would train each employee in the procedures to be followed to minimize hazards related to ladders and stairways:

- (a) Employees were not trained to identify hazards of ladder use.

Serious citation 1, item 2 alleges:

29 CFR 1926.501(b)(11): Guardrail systems with toeboards, safety net systems, or personal fall arrest system were not used to protect employees from falling from a steep roof with unprotected sides and edges 6 feet or more above lower levels.

- (a) Employees working on a steep roof, were not protected from falling 13 feet to the ground.

Serious citation 1, item 3 alleges:

29 CFR 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 (.9 m) above the upper landing surface to which the ladder was used to gain access:

- (a) Employee's ladder access to the roof did not extend at least three feet above the landing surface.

Facts

Compliance Officer (CO) Nishiyama-Atha testified that on November 6, 1998, as he was conducting another inspection, he noted a worker at Accu-Rate's work site shingling a sloped

roof at a height of approximately 13 feet without any fall protection (Tr. 9-12). Nishiyama-Atha testified that he observed a ladder placed in the center off the roof for access, but that the ladder was not tied off, nor did it extend the required 36 inches above the edge (Tr. 14). Nishiyama-Atha testified that an employee carrying heavy shingles up to the roof could deflect the ladder, causing it to move, and unbalance the employee (Tr. 15). Nishiyama-Atha further stated that an employee climbing to the top of the ladder would have nothing to grab onto as he dismounted the ladder (Tr. 14). Nishiyama-Atha interviewed the worker, who told him that he was an experienced roofer, but had not received any safety and/or health training from his employer, Accu-Rate (Tr. 14). The employee was not aware of the 36 inch requirement, but was aware of the need to tie off the ladder (Tr. 15).

Nishiyama-Atha testified that the cited violations were classified as serious, because a fall from 13 feet could result in broken bones or death (Tr. 13). He further stated that he followed the formula set forth in OSHA's Field Information Reference Manual in calculating the proposed penalties (Tr. 20). Reductions were made based on the small size of the employer and the absence of any prior violations (Tr. 20). No reductions were made for good faith because it did not appear that Accu-Rate had any safety and health program (Tr. 18, 21-22).

Discussion

Having found that the Secretary's *prima facie* case established the cited violations, the citation was affirmed on the record (Tr. 27-30). As part of pre-hearing settlement negotiations, the Secretary filed a proof of claim in Accu-Rates' bankruptcy proceedings. The proof of claim was for a reduced total penalty in the amount \$1,200.00 (Tr. 24). That amount will be assessed.

ORDER

1. Citation 1, item 1a and 1b, alleging violations of §1926.503(a)(1) and 1926.1060(a) are AFFIRMED.
2. Citation 1, item 2 alleging violation of §1926.501(b)(11) is AFFIRMED.
3. Citation 1, item 3, alleging violation of §1926.1053(b)(1) is AFFIRMED.
4. A combined penalty of \$1,200.00 is ASSESSED.

Stanley M. Schwartz
Judge, OSHRC

Dated: