

United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1244 North Speer Boulevard, Room 250
Denver, Colorado 80204-3582

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SECRETARY OF LABOR,

Complainant,

v.

OSHRC DOCKET NO. 99-1887

MAC CONSTRUCTION,

Respondent.

APPEARANCES:

For the Complainant:

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

For the Respondent:

Pat McDonald, Mac Construction, Franksville, Wisconsin

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, Mac Construction (Mac), at all times relevant to this action maintained a place of business at 18501 2 Mile Road, Franksville, Wisconsin, where it operated a construction business. Respondent admits it is an employer engaged in a business affecting commerce and is subject to the requirements of the Act.

On August 18, 1999 the Occupational Safety and Health Administration (OSHA) conducted an inspection of Mac's worksite at Madison, Wisconsin. As a result of that inspection, on August 31, 1999, Mac was issued citations alleging violations of the Act together with proposed penalties. By

filing a timely notice of contest, Mac brought this proceeding before the Occupational Safety and Health Review Commission (Commission).

On January 19, 2000, an E-Z trial hearing was to be held in Milwaukee, Wisconsin. Prior to the start of the hearing, however, a pre-trial conference was held, during which the merits of the Secretary's case was discussed. Mac Construction's owner, Pat McDonald, also provided information about the merits of the case and his company's operations.. Following that conference, the parties reached a settlement on the citation and proposed penalties. That agreement was entered into the record, as set forth below.

Citation 1, item 1(a) alleges: SERIOUS

29 CFR 1926.20(b)(2): Accident prevention programs did not provide for frequent and regular inspections of job sites, materials and equipment to be made by competent persons:

a) No accident prevention program was in place to inspect the job site and correct problems that expose employees to hazards.

Proposed Penalty:
\$450.00

Citation 1, item 1(b) alleges:
SERIOUS

29 CFR 1926.21(b)(2): The employer did not instruct each employee in the recognition and avoidance of unsafe condition(s) and the regulation(s) applicable to his work environment to control or eliminate any hazard(s) or other exposure to illness or injury:

a) Employees performing steel erection activities were not trained on the basic requirements of safety including fall protection.

Citation 1, item 2 alleges:
SERIOUS

29 CFR 1926.105(a): Safety nets were not provided when workplaces were more than 25 feet above the ground or water surface, or other surface(s) where the use of ladders, scaffolds, catch platforms, temporary floors, safety lines, or safety belts was impractical:

a) Employees were walking the steel framework of the building at heights over 25 feet without the use of any fall protection.

Proposed Penalty:
\$1,500.00

Citation 1, item 3 alleges:

SERIOUS

29 CFR 1926.453(b)(2)(v): A body harness was not worn and a lanyard attached to the boom or basket when working from an aerial lift:

a) Four employees working in three aerial lifts at elevated positions were not wearing personal fall arrest systems.

Proposed Penalty:
\$750.00

The Secretary agreed to amend citation 1, items 1(a) and 1(b) from a serious citation to an other than serious. Items 2 and 3 remained as serious citations. The total penalty agreed to was \$1,100.00 payable in two equal payments of \$550.00. The first payment is due after this Order becomes final (approximately 30 days) and the second payment is due six months thereafter. Respondent agreed to provide OSHA with a copy of a written safety plan that encompasses all aspects of its work. This plan would be done in conjunction with Respondent's insurance carrier and it would specifically provide for Respondent's plan for fall protection. The plan shall be provided to OSHA within sixty days after this matter becomes a final order of the Commission (Tr. 18-19).

ORDER

1.

Citation 1, items 1(a) and 1(b) is AFFIRMED as an other-than-serious citation.

2.

Items 2 and 3 are AFFIRMED. A total penalty of \$1,100.00 is ASSESSED payable in two equal installments.

Stanley M. Schwartz
Judge, OSHRC

Dated: March 9, 2000