



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

One Lafayette Centre
1120 20th Street, N.W. — 9th Floor
Washington, DC 20036-3419

PHONE:
COM (202) 606-5100
FTS (202) 606-5100

FAX:
COM (202) 606-6050
FTS (202) 606-6050

SECRETARY OF LABOR
Complainant,

v.

DONALD W. THOMPSON, INC.
Respondent.

OSHRC DOCKET
NO. 94-0742

**NOTICE OF DOCKETING
OF ADMINISTRATIVE LAW JUDGE'S DECISION**

The Administrative Law Judge's Report in the above referenced case was docketed with the Commission on January 12, 1995. The decision of the Judge will become a final order of the Commission on February 13, 1995 unless a Commission member directs review of the decision on or before that date. **ANY PARTY DESIRING REVIEW OF THE JUDGE'S DECISION BY THE COMMISSION MUST FILE A PETITION FOR DISCRETIONARY REVIEW.** Any such petition should be received by the Executive Secretary on or before February 1, 1995 in order to permit sufficient time for its review. See Commission Rule 91, 29 C.F.R. 2200.91.

All further pleadings or communications regarding this case shall be addressed to:

Executive Secretary
Occupational Safety and Health
Review Commission
1120 20th St. N.W., Suite 980
Washington, D.C. 20036-3419

Petitioning parties shall also mail a copy to:

Daniel J. Mick, Esq.
Counsel for Regional Trial Litigation
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Avenue, N.W.
Washington, D.C. 20210

If a Direction for Review is issued by the Commission, then the Counsel for Regional Trial Litigation will represent the Department of Labor. Any party having questions about review rights may contact the Commission's Executive Secretary or call (202) 606-5400.

FOR THE COMMISSION

Ray H. Darling, Jr. / SKA
Ray H. Darling, Jr.
Executive Secretary

Date: January 12, 1995

DOCKET NO. 94-0742

NOTICE IS GIVEN TO THE FOLLOWING:

Daniel J. Mick, Esq.
Counsel for Regional Trial Litigation
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Ave., N.W.
Washington, D.C. 20210

Robert Friel, Esq.
Assoc. Regional Solicitor
Office of the Solicitor, U.S. DOL
1111 Third Avenue, Suite 945
Seattle, WA 98101

Deborah L. Sather, Esq.
Stoel Rives Boley Jones & Grey
900 SW Fifth Avenue Suite 2300
Portland, OR 97204

James H. Barkley
Administrative Law Judge
Occupational Safety and Health
Review Commission
Room 250
1244 North Speer Boulevard
Denver, CO 80204 3582

00110506409:10



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1244 N. Speer Boulevard
Room 250
Denver, Colorado 80204-3582

PHONE:
COM (303) 844-3409
FTS (303) 844-3409

FAX:
COM (303) 844-3759
FTS (303) 844-3759

SECRETARY OF LABOR,

Complainant,

v.

DONALD W. THOMPSON, INC.,

Respondent.

OSHRC DOCKET
NO. 94-0742

APPEARANCES:

For the Complainant:
Cathy L. Barnes, Esq., Office of the Solicitor,
U.S. Department of Labor, Seattle, WA.

For the Respondent:
Deborah L. Sather, Esq., Portland, OR

DECISION AND ORDER

This matter was duly brought before the Commission by Respondent's notice of contest. The matter was set for hearing and tried on October 19, 1994.

Prior to the taking of evidence, Complainant withdrew Item 1 of Citation 1. At the conclusion of the hearing, findings of fact and conclusions of law were made with respect to the existence of the violations remaining at issue and the appropriate penalty. Findings were not made with respect to the serious characterization of Items 2, 3 and 4 of Citation No. 1. These findings are made now. Impalement on the unguarded rebar would cause serious physical injury, as would contact with the blade of the radial saw.

Respondent's October 31, 1994 Motion for Reconsideration is without merit, and is DENIED. The Compliance Officer's testimony establishes the cited violations. No witnesses with first hand knowledge of the worksite conditions during the inspection contradicted the CO's testimony.

In accordance with the finding of fact entered into the transcript and those above, it is:

ORDERED:

1. Item 2 of Serious Citation 1 is **AFFIRMED** and a penalty of \$100 is **ASSESSED**.
2. Item 3 of Serious Citation 1 is **AFFIRMED** and a penalty of \$100 is **ASSESSED**.
3. Item 4 of Serious Citation 1 is **AFFIRMED** and a penalty of \$75.00 is **ASSESSED**.
4. Item 1 of Other Citation 2 is **AFFIRMED**. No penalty is **ASSESSED**.


James H. Barkley
Judge, OSHRC

Dated: January 6, 1995