



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
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SECRETARY OF LABOR
Complainant,

v.

MARCO ELECTRONICS SALES & SERVICE
Respondent.

**OSHRC DOCKET
NO. 93-1374**

**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 May 6, 1994. The decision of the Judge will become a final order of the Commission on June 7, 1994 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 May 26, 1994 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.
Executive Secretary

Date: May 6, 1994

DOCKET NO. 93-1374

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Dorothy Matocha, Owner
Marco Electronics
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Corpus Christi, TX 78404

Benjamin R. Loye
Administrative Law Judge
Occupational Safety and Health
Review Commission
Room 250
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SECRETARY OF LABOR,
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MARCO ELECTRONICS
SALES & SERVICE,
Respondent.

OSHRC DOCKET
NO. 93-1374

APPEARANCES:

Jack F. Ostrander, Esq., Office of the Solicitor, U.S. Department of Labor, Dallas, Texas.

Dorothy Matocha, Owner, Marco Electronics, Corpus Christi, Texas.

Before: Administrative Law Judge Benjamin R. Loye

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, Marco Electronics Sales & Service (Marco), at all times relevant to this action maintained a worksite at 1628 Morgan Avenue, Corpus Christi, Texas, where it was engaged in sale and repair of electronic equipment (Tr. 12-13). Marco is an employer engaged in a business affecting commerce and is subject to the requirements of the Act (Tr. 13).

On February 17, 1993 the Occupational Safety and Health Administration (OSHA) conducted an inspection of Marco's Morgan Avenue worksite (Tr. 11). As a result of the inspection, Marco was issued citations, together with proposed penalties,

alleging violations of the Act. By filing a timely notice of contest Respondent brought this proceeding before the Occupational Safety and Health Review Commission (Commission).

On March 8, 1994, a hearing was held in Corpus Christi, Texas, on the contested issues. At the hearing, Complainant's motion to amend the classification of "serious" citation 1, items 3(a) and (b) to "other than serious" citations without penalties was granted (Tr. 8). As the parties have waived an opportunity to submit briefs on the remaining issues; this matter is now ready for disposition.

Serious Citation 1, items 1 & 2

The named citations allege:

1

29 CFR 1910.36(b)(4): Exit(s) were locked or fastened, preventing free escape from inside of the building:

At this establishment, the marked exit from the shop area to Morgan Avenue was locked, exposing employees to smoke and fire hazards.

2

29 CFR 1910.157(c)(1): Portable fire extinguishers were not mounted, located and identified so that they were readily accessible without subjecting the employees to injuries:

At this establishment, a 5-pound carbon dioxide fire extinguisher mounted on the leg of the workbench, eighteen inches (18") off the floor, was blocked by a rolling work table and a large screen TV being repaired.

Facts

Compliance Officer (CO) James Erickson testified that at the time of his inspection, the exit door from Marco's repair section was locked; the key was hung on the wall next to the door opposite the side where the lock was located (Tr. 14-15; Exh. C-1). The only other exit available was located in the front showroom (Tr. C-13).

A fire extinguisher was mounted approximately 18 inches off the floor on the leg of a work bench (Tr. 19; Exh. C-2). Mobile work tables carrying equipment obstructed access to the fire extinguisher (Tr. 19). The fire extinguisher could be accessed from the

shop side (Tr. 30). There was no sign identifying the location of the fire extinguisher (Tr. 23).

Marco employs seven workers; all had access to the back room (Tr. 16, 24). Two employees were working in the back room at the time of the inspection (Tr. 16). In the event of fire, employees trapped and/or unable to locate and access the fire extinguisher in the back room could suffer burns or smoke inhalation (Tr. 17-18). Erickson admitted that the chance of a fire actually occurring on the premises was low to medium given the nature of the business (Tr. 18, 24). Smoke detectors were located in every room (Tr. 31).

The cited violations have been abated (Tr. 35-36, 39-40).

Citation 1, items 3a, 3b

The named citations allege:

3a

29 CFR 1910.1200(e)(1): The employer did not develop, implement, and/or maintain at the workplace a written hazard communication program which describes how the criteria specified in 29 CFR 1910.1200(f), (g), and (h) will be met.

No Written Hazard Communication Program was developed for employees at Marco Electronic Sales & Service, 1628 Morgan, Corpus Christi, TX. 78404.

3b

29 CFR 1910.1200(f)(5)(i): The employer did not ensure that each container of hazardous chemicals in the workplace was labeled, tagged or marked with the identity of the hazardous chemical(s) contained therein:

At this establishment, a plastic one-pint container used to store and dispense muriatic (sic) acid was not labeled to identify the contents or hazards associated with the contents.

Facts

Marco does not contest the CO's testimony that a container of muriatic acid, which was used sometimes daily, sometimes weekly, for cleaning electrical parts, was unlabeled (Tr. 26-27). Neither does Marco contest the CO's statement that it did not have a written hazard communication program covering the muriatic acid (Tr. 27).

Marco's only defense is that it was unaware of OSHA requirements (Tr. 41). The muriatic acid was removed from the shop during the inspection and disposed of (Tr. 29).

Discussion

As a threshold matter, the undersigned notes that Marco's unfamiliarity with OSHA requirements is not a defense, and cannot affect the penalty assessment in this case. Employers are presumed to know of standards that affect their business; ignorance of the standards does not excuse noncompliance. *Capform, Inc.*, 13 BNA OSHC 2219, 1989 CCH OSHD ¶28,503 (No. 84-556, 1989). "An employer has a duty to inquire into the requirements of the law." *Peterson Brothers Steel Erection Company*, 16 BNA OSHC 1196, 1993 CCH OSHD ¶30,052 (No. 90-2304, 1993).

Taking the relevant testimony into consideration, the undersigned finds that the Complainant established its prima facie case on the cited items.

Penalty

Penalties in the amount of \$1,050.00 and \$600.00 were proposed for items 1 and 2, respectively.

Both items were properly classified as serious. The gravity of the items, however, given the number of employees exposed and the likelihood of a fire actually occurring is deemed low. In addition the undersigned finds that given the prompt abatement of the citation items, and in the absence of any evidence of bad faith, a reduction for good faith is appropriate.

Penalties in the amount of \$800.00 and \$450.00 will be assessed.

Findings of Fact and Conclusions of Law

All findings of fact and conclusions of law relevant and necessary to a determination of the contested issues have been found specially and appear in the decision above. See Rule 52(a) of the Federal Rules of Civil Procedure.

ORDER

1. Citation 1, item 1, alleging violation of §1910.36(b)(4), is AFFIRMED, and a penalty of \$800.00 is ASSESSED.

2. Citation 1, item 2, alleging violation of §1910.157(c)(1), is AFFIRMED, and a penalty of \$450.00 is ASSESSED.

3. Citation 1, items 3a and 3b, alleging violations of §§1910.1200(e)(1) and (f)(5)(i) are AFFIRMED as "other than serious" violations without penalty.



Benjamin R. Loye
Judge, OSHRC

Dated: April 29, 1994