United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR, Complainant, v. LATSHAW DRILLING AND EXPLORATION, LLC, Respondent.	OSHRC Docket No. 15-1561

Appearances:

Kristina Harrell, Esq., U.S. Department of Labor, Office of the Solicitor, Dallas, Texas
For Complainant

Merritt B. Chastain, III, Esq., Ogletree Deakins Nash Smoak & Stewart, P.C., Houston, Texas
For Respondent

Before: Administrative Law John H. Schumacher

DECISION AND ORDER

I. Procedural History

This proceeding is before the Occupational Safety and Health Review Commission ("the Commission") pursuant to section 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 659(c) ("the Act"). On March 25, 2015, pursuant to a Regional Emphasis Program on oil and gas operations, CSHO Dan Hobelman attempted to conduct an inspection of Respondent's worksite, which included an oil and gas drilling rig located in Midland, Texas. *See Citation and Notification of Penalty*. Pursuant to company policy, Respondent denied entry and requested CSHO Hobelman to procure a warrant. (Tr. 27). CSHO Hobelman returned with a warrant on April 10, 2015, and, after conferring with on-site management and safety personnel, proceeded to conduct an inspection. (Tr. 27–28).

As a result of the inspection, on August 18, 2015, OSHA issued a *Citation and Notification of Penalty* ("Citation") to Respondent, alleging one serious violation of the Act and proposing a penalty of $4,000.00. The violation alleges that Respondent failed to ensure that strain relief was provided on an extension cable running to a flood light. *See* 29 C.F.R. § 1910.305(g)(2)(iii). In response to the allegations, Respondent claims that it did not know, nor could it have known, of the violative condition.

Respondent submitted its Notice of Contest on September 15, 2015, bringing this case before the Commission. The case was designated for Simplified Proceedings pursuant to Commission Rule 203(a) and assigned to Judge Peggy S. Ball. Due to a scheduling conflict, the case was reassigned to this Court on February 3, 2016. A trial was held on February 9, 2016, in Dallas, Texas, after which both parties submitted post-trial briefs.

II. Stipulations and Jurisdiction

On January 29, 2016, the parties submitted a "Joint Stipulation Statement" to the Court. (Ex. J-1). The Statement is identified in the record as Joint Exhibit No. 1. (Ex. J-1). In lieu of reproducing the entire set of stipulations, the Court shall refer to Exhibit No. J-1 as necessary. As part of those stipulations, the parties agreed that Respondent is "an employer engaged in a business affecting commerce within the meaning of section 3(5) of the [Occupational Safety and Health] Act" and that "Jurisdiction of this proceeding is conferred upon the Occupational Safety and Health Review Commission by Section 10(c) . . . ." (Ex. J-1 at 2).

III. Factual Background

Four witnesses testified at trial: (1) Daniel Hobelman, Compliance Safety and Health Officer ("CSHO"); (2) William Cody Ashley, Respondent's Director of Health, Safety, and

Environment; (3) Jim Bunch, Respondent's Safety Supervisor; and (4) David Wright, Respondent's Rig Manager/Tool Pusher.

"Latshaw is in the business of service as contract driller of oil and gas wells for companies engaged in the exploration and production of fossil fuels." *Resp't Br.* at 5. Accordingly, Respondent has a fleet of oil and gas drilling rigs, which travel between multiple well sites. The particular rig at issue in this case is named Latshaw Rig 43. (Ex. C-2). Rig 43 was a new drilling rig, having been put into production only a few months before the inspection occurred. (Tr. 132–33; Ex. C-2 at 6). Respondent purchased Rig 43 from a company called National Oilwell Varco, or NOV. (Tr. 135).

According to William Ashley, when Respondent purchases a new rig, it sends a complement of hourly employees and rig managers to NOV's facilities to supervise the final stage of manufacturing. (Tr. 135). In particular, they install Latshaw-specific equipment and ensure that all required safety equipment is in place. (Tr. 135). After these updates have occurred, the drilling rig is put into production. (Tr. 136). Prior to drilling, the rig manager assigned to the newly-minted rig will perform what is known as a pre-spud (or pre-drilling) inspection, which is done with every rig every time a new well is drilled. (Tr. 136). Then, within a few days of the beginning of drilling operations, Respondent sends out its rig inspection team, which performs a comprehensive inspection of the rig and its components. (Tr. 136).

Respondent took possession of Rig 43 on January 22, 2015, and began drilling on January 27, 2015. (Tr. 132–33). The Morning Reports submitted by Respondent indicate that Rig 43 was first inspected by Rig Manager Byron Johns on January 27, 2015. (Tr. 179; Ex. R-8 at 6). According to Respondent's witnesses, this was consistent with company policy, which

required a pre-spud inspection prior to drilling.[1] (Tr. 131, 179). David Wright, who also served as Rig Manager for Rig 43, testified that the pre-spud inspection included electrical components, such as strain relief devices. (Tr. 229–30). Approximately four days after drilling began, Respondent's rig inspection team performed a comprehensive inspection of Rig 43. (Ex. R-7 at 6).

The February 1, 2015 comprehensive inspection of Rig 43 was the first of four quarterly inspections, which are required for each rig in Respondent's fleet. (Tr. 203). According to Jim Bunch, these inspections take approximately 6 hours and cover 596 different points of emphasis. (Tr. 188–190; Exs. C-2, R-7). During the first inspection of Rig 43, Mr. Bunch noted 31 deficiencies; however, he remarked that many of those deficiencies had to do with signage and fixing missing labels. (Tr. 171).

Approximately 2 months later, on March 26, 2015, Complainant attempted to conduct an inspection of the rig; however, as noted above, Respondent denied entry and requested a warrant. (Tr. 26–27). On the very next day, March 27, 2015, Jim Bunch arrived at Rig 43 to perform its second quarterly inspection. (Tr. 172). Mr. Bunch explained that he was unaware that OSHA had attempted to inspect the premises prior to his arrival. (Tr. 219). However, as to why the second quarter inspection occurred in the first quarter, Mr. Bunch testified that he has to inspect all of Respondent's rigs, which takes him from his home near Tyler, Texas to "southeast Oklahoma and over into New Mexico." (Tr. 218). Accordingly, he stated that he has to allocate his time appropriately, including taking into account his 14-day-on/14-day-off schedule: "For example, I'm not going to go to Oklahoma if I've got four rigs there in the middle of rig up and

1. Bunch noted that a pre-spud inspection would not be required if the rig is merely moved to a different well at the same site. (Tr. 180). In such cases, the equipment is not "rigged down"; rather, it is picked up with hydraulics and moved to a different well. (Tr. 180). When the equipment is rigged down and moved to a different site, another pre-spud inspection must take place. (Tr. 179–80).

two that are near the end of the well. I go where I know I can start, and follow-up where I can get a rig a day or every other day based on operations in the area." (Tr. 218–19). According to Bunch, the second quarterly inspection of Rig 43 was a success. (Tr. 183–84). The Comments section of the Rig Inspection report indicates that the crew reduced the number of "discrepancies" from 31 in February to 3 in March. (Ex. R-7). Further, Rig 43's crew set a new record low score for all rigs within Respondent's fleet, which earned them what Respondent's terms the "Rig of Excellence" flag. (Ex. R-7).

On April 10, 2015, Complainant returned to the worksite with a warrant and was allowed to conduct an inspection. (Tr. 27–28). He was accompanied by the rig manager and two safety representatives. (Tr. 30). Over the course of approximately 2–4 hours, CSHO Hobelman only identified a single violation: When traveling along the trip tank platform, CSHO Hobelman observed that the sheathing on a live extension cord had pulled back from the plug as it entered into a floodlight, exposing a small portion of the inner, insulated conductors.[2] (Tr. 34–37; Ex. C-1). According to CSHO Hobelman, he was approximately four to six feet away from the flood light when he observed a "narrowing of the wire going into the conductor", which prompted him to check for strain relief devices. (Tr. 35–37; Ex. C-1). Upon further inspection, CSHO Hobelman noticed that black (electrical) tape had been wrapped around the sheathing that had pulled away from the plug. (Tr. 43). CSHO Hobelman testified that he talked to "one individual", who told him that the tape had been there "as long as two weeks." (Tr. 44–45). CSHO Hobelman's notes state "[Redacted] the tape was on the wires for two weeks." (Ex. R-1 at 7). On cross-examination, CSHO Hobelman stated that the redacted portion "had to have been an individual who *may have been* identifying his position or name. *I'm not sure what was in*

2. "Sheathing" is the heavy, black rubber substance that protects flexible cords. (Tr. 38). The conductors are also coated with insulation, but it is neither as heavy nor as durable. (Tr. 39).

there." (Tr. 109) (emphasis added). There was no other evidence to indicate how long the tape had been on the cord or how long the inner, insulated conductors had been exposed.

IV. Discussion

To prove a violation of an OSHA standard, Complainant must prove, by a preponderance of the evidence, that: (1) the cited standard applied to the facts; (2) the employer failed to comply with the terms of the cited standard; (3) employees were exposed or had access to the hazard covered by the standard, and (4) the employer had actual or constructive knowledge of the violative condition (*i.e.*, the employer knew, or with the exercise of reasonable diligence could have known). *Atlantic Battery Co.*, 16 BNA OSHC 2131 (No. 90-1747, 1994).

A violation is "serious" if there was a substantial probability that death or serious physical harm could have resulted from the violative condition. 29 U.S.C. § 666(k). Complainant need not show that there was a substantial probability that an accident would actually occur; he need only show that if an accident occurred, serious physical harm could result. *Phelps Dodge Corp. v. OSHRC*, 725 F.2d 1237, 1240 (9th Cir. 1984). If the possible injury addressed by a regulation is death or serious physical harm, a violation of the regulation is serious. *Mosser Construction*, 23 BNA OSHC 1044 (No. 08-0631, 2010); *Dec-Tam Corp*., 15 BNA OSHC 2072 (No. 88-0523, 1993).

The key issue in this case is whether Respondent knew or, with the exercise of reasonable diligence, could have known of the faulty or missing strain relief leading to the flood light on the trip tank platform. Complainant hinges its case, in large part, on two points: (1) the unattributed statement of an individual, who allegedly told CSHO Hobelman that the tape on the cord's sheathing had been there for two weeks; and (2) that Respondent failed to exercise reasonable diligence in discovering the condition. Respondent contends that Complainant has failed to

establish how long the condition existed, which calls into question whether Respondent had the opportunity to observe the violation. In support of this argument, Respondent presented evidence of its inspection and training programs to illustrate that it exercised reasonable diligence in attempting to identify violations on its worksite. Based on the arguments that follow, the Court finds that Complainant failed to establish that Respondent knew or could have known of the violation.

a. Citation 1, Item 1

Complainant alleged a willful violation of the Act as follows:

> 29 CFR 1910.305(g)(2)(iii): Flexible cords and cables were not connected to devices and fittings so that strain relief was provided that would prevent pull from being directly transmitted to joints or terminal screws:
>
> On or about April 10, 2015 employees were exposed to electrical shock and or burns when the employer failed to ensure that strain relief was provided on the flood light on the trip tank platform.

The cited standard provides:

> Flexible cords and cables shall be connected to devices and fittings so that strain relief is provided that will prevent pull from being directly transmitted to joints or terminal screws.

29 C.F.R. § 1910.305(g)(2)(iii).

1. The Standard Applies

In their Joint Stipulation Statement, the parties stipulated that 29 C.F.R. § 1910.305(g)(2)(iii) was "applicable". (Ex. J-1 at 2). They also stipulated that the cord at issue in Citation 1, Item 1 was a flexible cord. (*Id.*). The title and plain language of the standard make it clear that the standard applies to flexible cords and cables.[3] Thus, the standard applies.

3. In its post-hearing brief, Respondent's legal argument is prefaced by the statement that "[t]he only issue is whether Latshaw (through its managers or supervisors) had knowledge of the hazard." *Resp't Br.* at 30.

2. The Terms of the Standard Were Violated

The terms of the standard indicate that flexible cords and cables must be connected to a strain relief device to prevent pull on the terminal screws or joints. *See* 29 C.F.R. § 1910.305(g)(2)(iii). While the Court is convinced by Ashley's testimony that the nut and rubber grommet on the bottom of the flood light box served as a strain relief device, the Court also finds that the device was not working as intended, which caused the sheathing to pull back from the plug. (Tr. 137; Ex. R-5 at 5). In other words, the strain relief device did not prevent pull on the terminal screws or joints. Accordingly, the Court finds that the terms of the standard were violated.

3. Employees Had Access to the Hazard

As with the previous two elements, the parties do not dispute that employees were exposed to the hazard. CSHO Hobelman credibly testified that the exposed conductors could energize adjacent metal components, including the handrail, if the soft, inner conductors remained exposed to potential damage. (Tr. 42, 58–59). At the time of the inspection, the flood light was energized and, according to Bunch, it ran 24 hours a day. (Tr. 213). Further, Wright testified that employees accessed the trip tank platform on a daily basis, which placed them near the location of the hazardous condition. Accordingly, the Court finds that Respondent's employees had access to the hazard. *See Gilles & Cotting, Inc.*, 3 BNA OSHC 2002 (No. 504, 1976) (access established by showing "that employees either while in the course of their assigned working duties, their personal comfort activities while on the job, or their normal means of ingress-egress to their assigned workplaces, will be, are, or have been in a zone of danger.").

4. Respondent Did Not Have Knowledge of the Condition

There are two ways by which Complainant can establish knowledge of a hazardous condition: actual and constructive knowledge. *See Atlantic Battery Co.*, 16 BNA OSHC 2131, *supra*. In this case, there was no testimony or evidence to suggest that any member of Respondent's management team either saw or were otherwise informed by their employees that the strain relief mechanism had failed, which precludes a finding of actual knowledge. (Tr. 84–85). Accordingly, Complainant argues that Respondent could have been aware of the condition and that its failure to identify the hazard illustrates a lack of reasonable diligence.

"To prove constructive knowledge, the Secretary must show that the employer, with the exercise of reasonable diligence, could have known of the hazardous condition." *Shaw Areva Mox Svcs., LLC*, 23 BNA OSHC 1821 (No. 09-1284, 2012) (citing *Precision Concrete Constr.*, 19 BNA OSHC 1404, 1406 (No. 99-0707, 2001)). Determining whether an employer exercised reasonable diligence requires the Court to consider a number of factors, including: (1) whether Respondent had adequate work rules and training programs; (2) whether management exercised adequate supervision of its employees; (3) whether Respondent performed inspections of the area in question; and (4) whether Respondent took measures to prevent the occurrence of violations. *See N&N Contractors, Inc.*, 18 BNA OSHC 2121 (No. 96-0606, 2000). The Commission has evaluated these factors by looking at how long the condition has existed and whether it was "readily apparent." *See Kaspar Wire Works Inc.*, 18 BNA OSHC 2178, 2196–97, (No. 90-2775, 2000), *aff'd*, 268 F.3d 1123 (D.C. Cir. 2001); *Hamilton Fixture*, 16 BNA OSHC 1073, 1091 (No. 88-1720, 1993), *aff'd*, 28 F.3d 1213 (6th Cir. 1994) (unpublished). The last two considerations—length of time and visibility—help to decipher whether Respondent had the opportunity to observe the condition and, thus, provide context for applying the factors identified

above. *See Texas ACA, Inc.*, 17 BNA OSHC 1048 (No. 91-3467) ("Moreover, the employer's duty is to take *reasonably* diligent measures to inspect its worksite and discover hazardous conditions; so long as the employer does so, it is not in violation simply because it has not detected or become aware of every instance of a hazard.") (citation omitted).

Implicit in CSHO Hobelman's testimony that he saw the condition from approximately six feet away and that it was roughly at eye-level, is that the condition was in plain view. At that distance, CSHO Hobelman said he noticed the cable narrowing as it entered the floodlight conductor from a distance of approximately four to six feet. (Tr. 35; Ex. C-1a). After reviewing the photographs of the cable, the Court is not convinced that the condition itself was in plain view. The floodlight is in a conspicuous location, but when viewed from the angle shown in Exhibit C-1a, it is not immediately apparent that there is a problem. It is not until CSHO Hobelman got up close to (and slightly underneath) the floodlight that the problem became evident. (Ex. C-1b). Although multiple witnesses testified that they would have identified the condition, it is not clear whether they are referring to the condition as it is illustrated in Ex. C-1b, taken from up close, or Ex. C-1a, where the condition is not immediately apparent.

Now, one can argue—as Complainant has—that if the CSHO was capable of observing the violation, then Respondent surely should have been on notice of its existence. *See Hamilton Fixture*, 16 BNA OSHC 1073 (No. 88-1720, 1993) (finding if CSHO could observe the problem, then company's management, "who were much more familiar with the site", could have identified the problem with the exercise of reasonable diligence). In *Hamilton*, however, the Court was addressing a fixed ladder that was regularly used by employees and had multiple hazards, including two broken rungs and a slight bend in the lower portion. *Id.* By comparison, the condition at issue in this case involved a cable that was fixed in place, was never moved, and

was left on at all times to provide light to the choke manifold. (Tr. 236). Further, according to Ashley, the trip tank platform contains "ancillary equipment that is off to the side. It does get used, not very frequently, so if he had been there for four days and he had not been to the trip tank where he could have seen this strain relief pulled, it would not surprise me unless work was commencing in the trip tank area." (Tr. 174). Even though Wright testified that he was on the trip tank platform on a daily basis, the Court is not convinced that this condition, amongst all of the other operational matters Wright reviews on a daily basis, was so obvious that it could be characterized as "readily apparent". *See LJC Dismantling Corp.*, 24 BNA OSHC 1478 (No. 08-1318, 2014) ("However, in *Simplex*, the court found constructive knowledge where the non-compliant conditions and everyday practices of the employees were readily visible '*and* indisputably should have been known to management.'" (quoting *Simplex Time Recorder Co. v. Sec'y of Labor*, 766 F.2d 575, 589 (D.C. Cir. 1985))).

Complainant's biggest problem, however, is not whether the condition was readily apparent. If, for the sake of argument, we assume that the condition was readily apparent, Complainant would still need to establish that the condition existed for a sufficient period of time for it to be identified, and that Respondent failed to exercise reasonable diligence to discover the condition. Complainant has failed to meet its burden of proof as to either.

As to how long the condition existed, Complainant rests on the hearsay testimony of "an individual" who told him that the condition existed for two weeks. (Tr. 44–45). There are two problems with this testimony. First, on cross-examination, CSHO Hobelman stated that he thought the redacted portion of his notes indicated the position and name of the individual that purportedly provided this information; however, he also stated "I'm not sure what was in there." (Tr. 109). In other words, Complainant is asking the Court to accord significant weight to a

hearsay statement, ascribed to an unnamed, unidentified "individual", that essentially resolves the only issue in this case. Without more information, other than the CSHO's assumption that the individual was being honest, the Court cannot make a determination as to whether this purported individual was in a position to make that observation. (Tr. 97). CSHO Hobelman's testimony is also problematic because the presence of electrical tape does not, of itself, indicate that the strain relief had failed—his field notes only state that tape had been on the sheathing for two weeks, not that the conductors were exposed. Further, the CSHO's testimony is undermined by the fact that he could not recall what information was redacted from his notes.

The in-court testimony of Bunch and Wright contradicts the out-of-court statement proffered by CSHO Hobelman. Let us assume that one of the employees present at the inspection was the individual who told CSHO Hobelman that the tape had been on the cable for a period of two weeks. The crew members present on the day of the inspection—April 10, 2015—had just begun their 14-day hitch the day before.[4] That means that the last time they were on the rig was on March 26, 2015. As noted above, the second quarter, comprehensive inspection occurred on March 27, 2015. According to Bunch, who performed the comprehensive inspection, he checked the strain relief on all fixtures around the rig, as well as the trip tank area, and found them all to be satisfactory. (Tr. 191–94; Ex. R-7 at 4). The Court finds this testimony more convincing than hearsay statements of an unnamed, unidentified individual. If the condition was satisfactory on March 27, 2015, then the first time this unidentified individual would have observed the condition in an unsatisfactory state was on April 9, 2015, or one day

4. Everyone, including the Rig Managers, worked a 14-day-on/14-day-off work schedule. The only difference between the managers and the employees is that the managers would stagger their schedules so that each of them would work seven days with one crew and seven days with another ("crew" including both day and night shifts for a particular hitch). (Tr. 248). At the time of the inspection, Wright testified that he had been on Rig 43 starting on April 2, 2015. (Tr. 274; Ex. R-8 at 25). Thus, due to the manner in which the schedules were staggered, a new crew would have begun their 14-day hitch on April 9, 2015, or 7 days later.

before the inspection. Accordingly, the Court finds that the statement attributed to the individual referred to by CSHO Hobelman was, at best, an assumption not supported by the facts presented at trial.

Complainant points to the electrical tape on the cable as evidence that someone was aware of the condition; else they would not have tried to repair it. *Compl't Br.* at 16. According to Ashley and Wright, however, rank-and-file employees are not allowed to repair electrical equipment; only electricians are authorized to do so. In that respect, Ashley testified that Respondent's electricians do not use electrical tape, but instead use a heat shrink wrap. (Tr. 139). Wright testified that he had electrical tape on site, but that it was locked up in his living quarters and that he would not attempt to repair electrical equipment because the rules prohibit it. (Tr. 259). Finally, Ashley testified that he discovered that NOV "will oftentimes use black tape" to supplement strain relief. (Tr. 139). In other words, the evidence suggests that it is equally possible that the tape on the floodlight cable could have come from the manufacturer and merely served as a supplement to the existing strain relief. In that instance, the presence of the tape does nothing to prove whether a violation existed. In either case, however, there is no convincing proof as to how long it had been there.[5]

Based on the foregoing, the Court finds that Complainant failed to present credible evidence indicating how long the violative condition existed. At best, the record illustrates that the condition developed at some point between the March 27, 2015 quarterly inspection and the April 10, 2015 OSHA inspection. Wright may very well have been on the trip tank platform during that period of time, and he may have even been able to identify the problem with the

5. To the extent that NOV may have placed the tape on the cable during the manufacturing process, Complainant's case would be more precarious, because the presence of the tape would not serve as an indication that the cable had been repaired.

cable while he was up there; however, without evidence to show how long the condition existed, Complainant cannot establish that he or anyone else that worked for Respondent had the opportunity to observe or correct it. *See Cranesville Block Co.*, 23 BNA OSHC 1977, 1986 (No. 08-0316, 2012) (knowledge not established where condition was in plain view but evidence did not establish how long it existed or that supervisors were in the area).

The Court would also like to address Complainant's second contention regarding knowledge—that Respondent failed to exercise reasonable diligence. In order to evaluate whether Respondent was reasonably diligent, there must be a baseline determination of what constitutes reasonable diligence under the circumstances. *See, e.g., Texas ACA, Inc.*, 17 BNA OSHC 1048, *supra* (holding that without evidence showing how long the condition existed, Secretary cannot show that inspections should have been done earlier or more frequently). In this case, Complainant similarly failed to establish how long the condition existed, which prevents the Court from being able to evaluate whether Respondent's training program, inspection regime, supervision, and preventative measures were sufficiently thorough so as to constitute reasonable diligence.

The foregoing finding, alone, is sufficient to vacate the citation. Nevertheless, the Court would like to address Complainant's contention that Respondent's safety program was somehow deficient. After his inspection, CSHO Hobelman—after only finding the single strain relief violation—told Respondent that Rig 43 was a very good-looking rig from a safety standpoint. (Tr. 70). Based on the evidence presented at trial, the Court agrees. Ashley testified that all employees receive comprehensive training on an annual, monthly, and daily basis.[6] (Tr. 122; Ex. R-6). Twenty-five percent of the annual training was devoted to electrical: fifty of the annual

6. Although the annual training is now broken down into monthly modules, one module is entirely devoted to electrical safety training. (Tr. 152).

training power point slides address electrical safety, including two that address flexible cords and strain relief. (Ex. 6 at 48–49). Wright added that electrical issues are regularly addressed in bulletins and during his morning safety meetings. (Tr. 269).

Further, the Court finds that Respondent's inspection regime is equally attuned to the hazards associated with working on an electrically powered rig. (Tr. 127). According to Ashley, drilling rigs are subject to three different kinds of inspections. (Tr. 131). This includes the 596-point, quarterly inspection; the pre-spud inspection; and daily walk-around inspections. Ashley and Bunch testified that one of the 596 points includes a review of all strain relief devices, which is indicated on the inspection form. (Tr. 132; Ex. R-7). Similarly, Wright testified that he also checks strain relief during his pre-spud inspections, which are required when the rig is "rigged down" and moved to another site. (Tr. 180, 230). Finally, Wright testified that he performed daily walk-around inspections to identify hazards, which includes strain relief. (Tr. 233–34). Wright noted, however, that the rig has "hundreds and hundreds and hundreds" of strain relief devices, which Bunch testified would not be feasible to inspect on a daily basis while still taking care of the day-to-day operations of running the rig. (Tr. 220, 233–34).

Of course, without knowing how long the condition existed, there is no way to assess whether the foregoing regime would have been sufficient to catch it; however, it is equally difficult to say that Respondent's safety program is insufficient when Complainant fails to establish what would constitute a proper replacement. The faulty strain relief device was one of literally hundreds of similar devices that, although subject to the vibrations inherent to drilling, are never moved and are kept in the same position, in the same location, at all times. As noted by Bunch, this was not a regularly traveled work area, nor were there tools or controls close by such that the cord would be subject to damage or pulling. Put simply, the Court is not persuaded that

more frequent or intensive inspections were necessary given the likelihood that a hazard would develop. *See Centex-Rooney Constr. Co.*, 16 BNA OSHC 2127 (No. 92-0851, 1994) ("The fact that only one faulty GFCI out of 100 was discovered may not by itself prove that the employer was reasonably diligent. GFCI's are generally reliable. However, when we consider that fact together with the evidence that Rooney checked GFCI's on a regular basis, and the Secretary's failure to introduce any contrary evidence . . . , the preponderance of the evidence establishes that Rooney was reasonably diligent.") (internal citation omitted). Nor, given the lack of evidence regarding how long the condition existed, is it clear that such inspections would have uncovered the violation at issue in this case.

Because Complainant failed to prove how long the condition existed, the Court cannot evaluate whether additional training, more frequent or intensive inspections, or any additional safety measures would have allowed Respondent to identify and correct the cited condition. As such, the Court finds that Complainant failed to establish that Respondent could have known of the condition with the exercise of reasonable diligence and, therefore, failed to establish the *prima facie* elements of a violation. Accordingly, Citation 1, Item 1 shall be VACATED.

ORDER

The foregoing Decision constitutes the Findings of Fact and Conclusions of Law in accordance with Rule 52(a) of the Federal Rules of Civil Procedure. Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that:

1. Citation 1, Item 1 and its associated penalty are hereby VACATED.

SO ORDERED

/s/
John H. Schumacher
Judge, OSHRC

Date: September 13, 2016
Denver, Colorado