



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,

Complainant,

v.

H.G. ARIAS & ASSOCIATES, LLC,
and its successors,

Respondent.

OSHRC DOCKET NO. 24-1011

Appearances:

Lindsay A. Wofford, Esq., Aletsey Z. Hinojosa, Esq., US DOL Office of the Solicitor, Dallas, Texas
For Complainant

Gabriel Acosta, Non-Attorney Representative, El Paso, Texas
For Respondent

Before: Administrative Law Judge Brian A. Duncan

DECISION AND ORDER

This proceeding is before the Occupational Safety and Health Review Commission (the Commission) pursuant to § 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 659(c) (the Act). Respondent H.G. Arias and Associates, LLC (Arias) is a staffing agency in El Paso, Texas, providing temporary employees to various business clients. On March 12, 2024, the Occupational Safety and Health Administration (OSHA) initiated an inspection at Stampcoat, Inc., in El Paso, Texas, one of Respondent's clients. At the time, seven Arias employees were assigned to work at the Stampcoat facility in various capacities.

As a result of the inspection, OSHA issued a Citation and Notification of Penalty (Citation) to Arias on June 21, 2024.¹ (Ex. C-1). The Citation alleged three serious violations of the Act. (Ex. C-1). Subsequently, the Secretary withdrew two of the cited violations prior to trial. (Tr. 8). The remaining item, Citation 1, Item 3, alleged a violation of OSHA’s hazard communication (Hazcom) employee information and training on hazardous chemicals standard at 29 C.F.R. § 1910.1200(h)(1), with a proposed penalty of \$9,680. Arias filed a timely notice contesting the Citation.

A two-day trial was conducted on September 17-18, 2025, in El Paso, Texas. The following individuals testified: (1) Ricky Carrasco for Provident Safety Consulting Services; (2) Christy Worley, account manager for Arias; (3) Jose Estrada, production manager for Stampcoat; (4) Jessica Pena, OSHA compliance officer (CO); and (5) Michelle Cardona, general assistant for Stampcoat. The parties submitted post-trial briefs for consideration.

Jurisdiction

The Commission has jurisdiction over this proceeding pursuant to section 10(c) of the Act. At all times relevant to this proceeding, Arias was an employer engaged in a business that affected interstate commerce within the meaning of sections 3(3) and 3(5) of the Act, 29 U.S.C. §§ 652(3) & (5).² See *Slingluff v. OSHRC*, 425 F.3d 861 (10th Cir. 2005).

¹ Stampcoat was also cited by OSHA as a result of this inspection. (Tr. 156).

² The following stipulations by the parties were read into the record: “1. The Commission has jurisdiction over this proceeding under Section 10(c) of the Occupational Safety and Health Act, 29 USC § 659(c). 2. Respondent is an employer engaged in a business affecting commerce in the meaning of § 3(5) of the Act, 29 USC § 652(5). 3. Respondent timely contested the citations.” (Tr. 86).

Findings of Fact

Stampcoat, the host employer

Stampcoat³ manufactures stamped and painted metal products, such as electrical panels. (Tr. 178). Approximately 25 employees worked in Stampcoat's two-building facility. (Tr. 140-41). One building was dedicated to metal stamping and the other to painting. (Tr. 73, 139). OSHA's inspection focused on the stamping operation. (Tr. 73). The equipment in the stamping area included "huge" presses with dies that pressed out and formed a piece of metal in various sizes up to two to three feet long and wide. (Tr. 74).

Jose Estrada was Stampcoat's production manager and reported directly to the company's owner. (Tr. 137, 140). Additionally, he and co-worker Michelle Cardona were responsible for safety at the Stampcoat facility. (Tr. 137-38, 143, 286-87). As the production manager, Estrada supervised about twenty-five employees, including four employees leased from Arias. (Tr. 140, 157-58). His duties as production manager included directing the daily work, setting schedules, and assigning employee tasks. (Tr. 139-40, 155-56). In his safety role he trained employees and supervised the use of personal protective equipment (PPE). (Tr. 138-39). Because the staffing employer, Arias, did not direct or assign any daily work tasks, all job-specific training was provided by Stampcoat. (Tr. 157).

Provident Safety Solutions, Inc. (Provident) was Stampcoat's safety consultant. (Tr. 62, 65-66, 68). Provident's services included developing a written safety policy, conducting worksite audits, and attendance at OSHA inspections. (Tr. 61-62, 64, 74, 80-81). They also provided Hazcom safety training and maintained training records for Stampcoat. (Tr. 62, 65-66, 68; Exs. C-10, C-11).

³ Stampcoat also does business as El Paso Tool & Die. (Tr. 62)

As relevant to this case, the most recent employee training for hazardous chemicals training had been provided on March 21, 2023, six months before the OSHA inspection. (Tr. 65, 67-69, 151, 153, 199; Ex. C-11).

Arias, the leasing/staffing employer

As stated earlier, Arias, the cited Respondent in this case, was a leasing/staffing employer that recruited, screened, and hired employees to work for its various client (host) companies. (Tr. 88; Ex. C-3). Christy Worley was an account manager and recruitment coordinator for Arias. (Tr. 88, 93-94). Her duties included coordinating with host employers to evaluate staffing needs and recruiting staff to fill open positions. (Tr. 88-89). Arias considered itself an employer of the employees assigned to a client. (Tr. 100). Arias paid the wages and provided worker's compensation insurance for the assigned employees. (Tr. 100-01).

Arias had a very small in-house staff of two to three people and about 95-100 employees assigned to its various host employers. (Tr. 92, 97, 113-14). Arias contracted with a host employer to recruit employees to meet that host employer's staffing needs. (Tr. 105). Their hiring process was simple. The individual completed an application and took a pre-employment drug screen. (Tr. 105). When the individual met the qualifications for a position with one of Arias' clients, Arias engaged them and provided a general safety training orientation to each worker. (Tr. 104-05; Ex. C-6). The applicant generally began working at the host employer's location a couple of days later. (Tr. 105).

The general safety training orientation was set forth in a 38-page training document that included information on several subjects, such as proper lifting, using PPE, materials handling, and lockout tagout. (Ex. C-6). Four pages were also dedicated to the safe handling of chemicals. (Ex. C-6, pp. 13-16). This four-page section included warnings about cleaning product use, proper

storage, use of protective equipment, and possible hazards related to chemical exposure, such as irritation and burns to skin and eyes. *Id.* The training was provided to all outsourced employees, regardless of which host employer they were assigned. (Tr. 104-05, 195-96; Ex. C-6).

Additionally, Arias' associate orientation manual also had a small section on safety issues. (Ex. R-4, pp. 45-46). Among other topics, the safety section included an instruction to “[r]ead and follow the precautions specified in the Material Safety Data Sheet (MSDS) for each chemical you will be working with.” (Ex. R-4, p. 46).

At the time of the inspection, Arias had employees assigned to the Stampcoat facility with job titles of custodian, general laborer, painter, and machine operator. (Tr. 114-16; Ex. C-4). Arias' staffing agreement with Stampcoat required Stampcoat to conduct any necessary job-specific training for the assigned employees. (Tr. 126, 189-90; Ex. C-3).

The Inspection

On March 12, 2024, OSHA CO Jessica Pena opened an inspection at Stampcoat's facility in El Paso, Texas.⁴ (Tr. 172). Stampcoat had been selected for a programmed inspection under OSHA's National Emphasis Program (NEP) for amputation hazards in the manufacturing industry. (Tr. 174-75, 179-80).

CO Pena arrived at the Stampcoat facility around 8:30 a.m. and began the opening conference with Jose Estrada, Stampcoat's production manager, and Michelle Cardona, general assistant to Estrada. (Tr. 137-38, 142-43, 173, 286). Estrada informed the CO that Provident was

⁴ Respondent argued the OSHA inspection was invalid because Stampcoat was undergoing an onsite state consultative visit. (R. Br. 1-2). However, to defer a programmed OSHA inspection, an onsite consultative visit needs to be “in progress in relation to the working conditions, hazards, or situations covered by the visit from the beginning of the opening conference through the end of the correction dates.” 29 C.F.R. § 1908.7(b)(1). Here, no evidence was presented to determine the beginning or end date of the consultative visit. The limited testimony on the issue was equivocal and seemed to indicate that any hazards found during the consultative visit had been resolved, suggesting a visit was no longer in progress. (Tr. 150). Even so, the facts presented did not establish a consultative visit was in progress. This argument is unfounded.

Stampcoat's safety representative, so CO Pena waited for a Provident representative to arrive before starting the inspection walkaround. (Tr. 71, 143, 173-74). About 30 minutes later, Ricky Carrasco, a safety representative with Provident, arrived at the facility, and the walkaround inspection began. (Tr. 71-72, 173-74).

When CO Pena learned that Arias provided some of the employees who were working at the Stampcoat facility, she also contacted Christy Worley and informed her of the inspection at Stampcoat. (Tr. 89-90, 177). Worley then traveled to the Stampcoat facility and joined the inspection group. (Tr. 111-12). When she arrived, she saw CO Pena, Estrada, Cardona, and Carrasco walking around and looking at machines. (Tr. 111-12). CO Pena and Carrasco took photographs during the walkaround. (Tr. 74).

During her inspection, CO Pena noticed bottles labeled as what appeared to be hazardous chemicals. (Tr. 175; Ex. C-9, p.8). She called her supervisor, Assistant Area Director (AAD) David Arrey, for permission to expand the scope of the inspection beyond amputation hazards. (Tr. 175-76). The AAD joined her on the second day of the inspection, March 13, 2024, along with Estrada, Cardona, Worley, and Carrasco. (Tr. 176). CO Pena returned to the Stampcoat facility later for two additional days, on March 14, 2024, and March 21, 2024.⁵ (Tr. 175-77).

CO Pena requested and received documentation from both Stampcoat and Arias. (Tr. 189, 197, 199-200, 205). The documents included Provident's Hazcom training attendance sheet (Ex. C-11), Stampcoat's chemical safety data sheet index (Ex. C-12), the safety data sheets for several chemicals (Ex. C-13 through C-16), the staffing agreement between Stampcoat and Arias (Ex. C-3), the March 2024 register of employees assigned to Stampcoat (Ex. C-4), Stampcoat's various job descriptions (Ex. C-5), and Arias' safety orientation program (Ex. C-6). During the March 13, 2024

⁵ The CO testified she was at the Stampcoat facility on four days. (Tr. 175-77). The photographs in the record are date-stamped as taken on March 12 and March 13, 2024. (Ex. C-9).

visit, the CO photographed several bottles of chemicals that were labeled as Degreex, SVO1, CalCool, phUp, and Calclean. (Tr. 185-88; Ex. C-9, pp. 8, 11, 14, 15, 21, 22, 25). The record does not provide information about where these bottles were located in relation to the Arias workers, nor how or when they were used. The record is silent as to whether the CO conducted any interviews with employees or management officials during the four visits to the Stampcoat facility.

Discussion

To establish a violation of an OSHA standard, Secretary must prove: (1) the cited standard applies; (2) the employer failed to comply with the terms of that standard; (3) employees were exposed to the hazardous condition covered by the standard; and (4) the employer knew, or with the exercise of reasonable diligence could have known, of the violative condition. *Atlantic Battery Co.*, 16 BNA OSHC 2131, 2138 (No. 90-1747, 1994). The Secretary has the burden of establishing each element by a preponderance of the evidence. *Hartford Roofing Co.*, 17 BNA OSHC 1361, 1365 (No. 92-3855, 1995).

Citation 1, Item 3

The Secretary cited Arias for a serious violation of 29 C.F.R. § 1910.1200(h)(1), which requires:

(h) Employee information and training. (1) Employers shall provide employees with effective information and training on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new chemical hazard the employees have not previously been trained about is introduced into their work area. Information and training may be designed to cover categories of hazards (e.g., flammability, carcinogenicity) or specific chemicals. Chemical-specific information must always be available through labels and safety data sheets.

29 C.F.R. § 1910.1200(h)(1).

The Citation alleges the violation as follows:

29 CFR 1910.1200(h)(1): Employees were not provided effective information and training on hazardous chemicals or materials in their work area at the time of their initial assignment and whenever a new hazard was introduced into their work area:

On or about March 13, 2024, and at times prior thereto, paint/coating area, EPTD/Stampcoat press areas; employees were not provided effective information and training on hazardous chemicals in their work area at the time of their initial assignment and whenever a new hazard that the employees had not been previously trained about was introduced into their work area.

(Citation at 8).

The Secretary argues that four Arias employees were exposed to hazardous chemicals and had not received the required training for hazards related to the chemicals Calcool, pHUp, and Degreeez. Arias argues that the standard did not apply, that it provided as much training as feasible before assignment to Stampcoat, and that it did not have knowledge of the alleged hazard.⁶

The cited standard applied

Respondent contends that because the chemicals were located at Stampcoat's facility, the standard did not apply to Arias. (Resp. Br. 2). The Court disagrees. Arias paid the wages and workers' compensation insurance for the employees and acknowledged it was an employer of the assigned employees. (Tr. 100-01). *See generally, Capform Inc.*, 13 BNA OSHC 2219, 2222 (No. 84-0556, 1989) (holding "each employer is responsible for the safety of its own employees") (citation omitted). Even as a leasing/staffing employer, Arias had safety obligations to its employees.

Further, hazardous chemicals were present at Stampcoat's facility. The Secretary submitted into evidence an index of all the chemicals used at the facility and the affiliated safety data sheets. (Exs. C-12, C-13, C-15). The Secretary alleged three of the chemicals were used by Arias

⁶ Arias also argued it qualified for an inspection exemption under a federal appropriations rider because it employed less than 10 employees. (Resp. Br. 1-2). However, the record shows that Arias employed approximately 100 individuals. The Court finds this argument has no merit.

employees at Stampcoat. (Sec’y Br. 8). The safety data sheets for these three chemicals—CalCool, phUp, and Degreerz—indicate hazards of serious injuries such as skin damage, eye damage, and respiratory harm could occur. (Tr. 206-10; Ex. C-13, pp. 62, 76; Ex. C-15, p. 12). The photographs taken by the CO during the onsite investigation show the three chemicals were present at the Stampcoat facility. (Tr. 186-88; Ex. C-9, pp. 15-17, 22, 28). Since hazardous chemicals were present at the Arias employees’ worksite, the standard applied.

The standard was violated

The Secretary asserts that four of the employees assigned to Stampcoat were not provided sufficient training on the hazardous chemicals used in their work areas. (Sec’y Br. 7-8). Arias contracted with Stampcoat to provide training on the specific chemicals used at the worksite because Arias did not assign the workers to specific tasks and was not familiar with Stampcoat’s production process. (Tr. 125-26, 156-57). Stampcoat utilized Provident to provide the hazardous chemicals training. (Tr. 65, 67-69; Ex. C-11). Provident last provided that training March 21, 2023. (Tr. 65, 67-69, 151, 153, 199; Ex. C-11). The four Arias employees at issue in this case were assigned to Stampcoat after the March 21, 2023 training. (Tr. 199-200; Ex. C-4). Therefore, those Arias employees were not trained in the safe use of hazardous chemicals present in the stamping area. The standard was violated.

Employee exposure to the cited condition was not established

The Commission has long held the Secretary must show that exposure to a hazardous condition “is reasonably predictable either by operational necessity or otherwise (including inadvertence), that employees have been, are, or will be in the zone of danger.” *Fabricated Metal Prods., Inc.*, 18 BNA OSHC 1072, 1074 (No. 93-1853, 1997) (citation omitted). Exposure to a

violative condition must be established by a preponderance of the evidence. *Miniature Nut & Screw Corp.*, 17 BNA OSHC 1557, 1561 (No. 93-2535, 1996)

The Secretary alleges four untrained employees were exposed to three hazardous chemicals—CalCool, phUp, and Degreez. (Sec’y Br. 3, 8, 11). The Secretary asserts that any employee in the role of either custodian, general laborer, or punch press operator was exposed to one of these three chemicals.⁷ (Tr. 200-01; Exs. C-4, C-11). According to the job assignment register, four Arias employees had the job title of either custodian or general laborer, and were assigned after Stampcoat’s March 21, 2023 training. (Ex. C-4). CO Pena believed (although the record fails to indicate the basis for her belief) that employees with the job title of general laborer were occasionally also assigned the duties of a punch press operator. (Tr. 201-02).

The list of chemicals at Stampcoat designated work areas which might use each of those chemicals. (Ex. C-12). The work areas were maintenance, production, janitorial, quality inspection, or washer pretreatment. (Ex. C-12). The Court notes that the job descriptions for the Arias employees at issue (janitor, general laborer, and punch press operator) make no mention of the use or handling of any specific chemical. (Tr. 101; Ex. C-5).

CO Pena did not adequately explain how she came to believe the Arias employees were exposed to the three identified chemicals. During testimony, the CO made a general statement that custodians, press operators and general laborers used these three chemicals to “clean the presses” and for janitorial cleaning. (Tr. 206; Ex. C-12). However, she did not specify which job task used a particular chemical or whether any job tasks actually assigned to the four Arias employees required the use of any of the three chemicals. (Tr. 201-210). CO Pena failed to explain whether,

⁷ Even though five new Arias employees were assigned to Stampcoat after the March 21, 2023 Hazcom training, the Secretary asserts that only four were exposed to hazardous chemicals because OSHA received no information regarding the chemicals used for the job title of painter, which was the assignment for one of the employees. (Sec’y Br. 3, n.1).

during her four visits, she had observed Arias employees at work, the nature of their work, or how chemicals were used in their daily tasks. Further, the CO did not describe any conversations or interviews that might have provided her with information about Arias employees' actual use of the chemicals.

When asked "Is [Degreez] a chemical that employees use to perform their jobs at Stampcoat?" CO Pena answered, "yes." (Tr. 210-11). When asked how often the chemical was used, CO Pena responded, "daily," without further explanation. (Tr. 211). Even if these chemicals were used daily by one or more of the twenty-five workers in the stamping area, the CO's testimony did not connect the use of hazardous chemicals to the Arias employees. Only four of the twenty-five employees working in the stamping area worked for Respondent. None of those allegedly exposed employees testified at trial. In addition, when the Stampcoat supervisor testified, the Secretary did not elicit any testimony from him about the details of the work assignments of the Arias employees, nor how chemicals were used by them in the production process.

The Court simply does not have sufficient evidence to conclude that these four Arias employees worked with CalCool, pHUp, or Degreez. Accordingly, the Secretary failed to establish employee exposure to the cited hazardous condition. *See Lane Constr. Corp.*, No. 16-0803, 2020 WL 4514845, at *3 (OSHRC, July 28, 2020) (CO's limited testimony insufficient to establish feasible method of abatement) (citation omitted); *Hurlock Roofing Co.*, 7 BNA OSHC 1108, 1111 (No. 76-357, 1979) (declining to credit CO's testimony on shoring protection that was not explained and for which no basis was given).

Employer knowledge of the cited condition was not established

To establish knowledge, the Secretary must prove that Respondent "knew or, with the exercise of reasonable diligence, could have known of the presence of the violative condition." *Am.*

Eng'g & Dev. Corp., 23 BNA OSHC 2093, 2095 (No. 10-0359, 2012); *Phoenix Roofing, Inc.*, 17 BNA OSHC 1076, 1079-80 (No. 90-2148, 1995) (“Employer knowledge is established by a showing of employer awareness of the physical conditions constituting the violation. It need not...be shown that the employer understood or acknowledged that the physical conditions were actually hazardous.”), *aff'd without published opinion*, 79 F.3d 1146 (5th Cir. 1996). It is well established under Commission precedent that the supervisor’s knowledge of a condition can be imputed to the employer. *See, e.g., Caterpillar, Inc.*, 17 BNA OSHC 1731, 1732 (No. 93-373, 1996) (applying long-standing principle of agency law that corporation is charged with knowledge of its agents), *aff'd*, 122 F.3d 437 (7th Cir. 1997); *Dun Par Engineered Form Co.*, 12 BNA OSHC 1962, 1965-66 (No. 82-928, 1986) (the actual or constructive knowledge of an employer’s foreman can be imputed to the employer); *Todd Shipyards Corp.*, 11 BNA OSHC 2177, 2179-80 (No. 77-1598, 1984) (corporate employers obtain knowledge through their agents and supervisory personnel).

The Secretary asserts that Arias knew, or should have known, that Stampcoat had not provided training on the specific chemicals used by Arias employees. (Sec’y Br. 11-12). The Secretary claims the job descriptions provided to Arias were the source of that knowledge and relies on *TMD Staffing*, No. 17-0560, 2018 WL 3695715 (OSHR CALJ, June 20, 2018) to support this position. (Sec’y Br. 11-12). However, *TMD* is an unreviewed judge’s decision, and is thus not binding on the Court. *See Leone Constr. Co.*, 3 BNA OSHC 1979, 1981 (No. 4090, 1976) (holding that a judge’s opinion is not binding Commission precedent). Further, the facts of that case are easily distinguishable. In *TMD*, actual worksite inspections were routinely conducted by the leasing company’s manager, and the judge found actual knowledge where the manager chose to not inspect

a machine's point-of-operation guarding. *See TMD*, 2018 WL 3695715, *7 (finding actual knowledge where inference that branch manager's choice to not inspect was not rebutted).

Here, it is undisputed that Arias had no onsite presence and had no actual knowledge of the hazard. The relevant Arias supervisor, Worley, was not familiar with the day-to-day activities of the Arias employees working at the Stampcoat facility. (Tr. 93, 103, 107, 125-26, 129). Estrada, the host employer Stampcoat's production manager, was aware of the job duties, chemicals used, and training provided at Stampcoat. (Tr. 139-40, 155-57). However, Estrada was not a supervisor for, or an agent of, Arias, and thus his knowledge cannot be imputed to Arias under Commission precedent.

The record establishes that to the extent Arias was generally aware that chemicals may be used at Stampcoat, Arias did actually provide some pre-employment training on the handling of chemicals. (Tr. 126-27; Ex. C-6). Stampcoat, by contract, was responsible for any additional training on employee job tasks at the facility, including training on specific hazardous chemicals. Arias did not have information about which chemicals were used at the Stampcoat facility for a particular job task. (Tr. 125-26, 156-57). As stated earlier, the job descriptions for the assigned Arias employees did not include any reference to chemicals or the use of a particular chemical. (Ex. C-5). Further, the record is unclear as to whether Arias actually received the job descriptions for the four Arias employees at issue. (Tr. 101).

The Secretary also argues that Arias should have asked for more details about each leased employee's job duties, and about Stampcoat's training, and should have further required Stampcoat to provide a quarterly assessment of each employees' work area. (Sec'y Br. 12; Exs. C-7, p.8, C-18). The Secretary does not provide case law to support this position. Instead, the Secretary refers

to an Arias injury and illness program document (IIPP)⁸ and generally to the text of an OSHA temporary worker guidance bulletin⁹ to create an assessment duty for Arias. (Sec’y Br. 12; Ex. C-7, C-18). The Court is not convinced by the Secretary’s argument.

The IIPP document mentions the possibility of quarterly reports from the host employer but was unsigned, undistributed, and appears to have not been implemented. (Tr. 96-100, 130; Ex. C-7, p. 8). The OSHA bulletin stated the “staffing agency should become familiar with the hazards at the host employer’s worksite” to ensure the “host employer provides appropriate and sufficient information and training.” (Ex. C-18). Neither of these documents are an enforceable OSHA regulation. An agency’s policy statement is “generally not binding on courts in reviewing agency actions, on parties in enforcement proceedings, or the agency itself in establishing a violation.” *Jake’s Fireworks Inc. v. Acosta*, 893 F.3d 1248, 1262 (10th Cir. 2018) (“Policy statements differ from legislative rules, which agencies promulgate through notice and comment and have the ‘force and effect of law.’”) (citations omitted).

Conclusion

Based on the totality of the circumstances discussed above, the Court concludes the Secretary failed to prove, by a preponderance of the evidence, that (1) Respondent’s employees were exposed to the cited condition, and (2) that Respondent had actual or constructive knowledge of the cited hazard. Accordingly, Citation 1, Item 3 will be vacated.

⁸ The IIPP document the Secretary references is an unsigned document that Worley created in 2022 based on an insurance company template. (Tr. 95-97, 99-100, 130, 133-34). Worley testified this document had not been distributed to Arias employees. (Tr. 96-97, 134).

⁹ The bulletin is entitled Temporary Worker Initiative – Hazard Communication (Ex. C-18). It states that it “is a part of a series of guidance documents developed under the Occupational Safety and Health Administration’s (OSHA’s) Temporary Worker Initiative (TWI)” with the focus on compliance with “safety and health requirements when temporary workers are employed under the joint employment of a staffing agency and a host employer.” (Ex. C-18). The bulletin’s disclaimer stated it is not a “standard or regulation” and that the “recommendations are advisory in nature.” (Ex. C-18, p. 5).

ORDER

This Decision constitutes the Findings of Facts and Conclusions of Law in accordance with Rule 52(a) of the Federal Rules of Civil Procedures and Commission Rule 90(a). Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that:

1. Citation 1, Item 1 was WITHDRAWN by Complainant; and
2. Citation 1, Item 2 was WITHDRAWN by Complainant; and
3. Citation 1, Item 3, is VACATED.

/s/ Brian A. Duncan _____

Judge Brian A. Duncan

U.S. Occupational Safety and Health Review Commission

Date: April 27, 2026
Denver, Colorado