



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

PLEASANT MOUNT WELDING, INC.,

Respondent.

OSHRC DOCKET NO. 24-1103

APPEARANCES:

Tracey D. Baker, Trial Attorney
U.S. Department of Labor, Office of the Solicitor, Philadelphia, PA
for Complainant (the Secretary)

Bob Non, CEO & Owner
Pleasant Mount Welding, Inc., Carbondale, PA
Pro Se for Respondent

BEFORE: Christine Le
Administrative Law Judge

DECISION AND ORDER

Pleasant Mount Welding, Inc. (PMWI) is a structural fabricator of aluminum, steel, and metals used in water and wastewater plants across the United States. Tr. 12. The Occupational Safety and Health Administration (OSHA) identified PMWI on a randomized list for inspection as part of its National Emphasis Program (NEP) to minimize amputation hazards. Tr. 23.

Following the inspection on May 13, 2024, OSHA issued PMWI a Citation and Notification of Penalty (Citation) alleging: 1) a serious violation of 29 C.F.R.

§ 1910.305(g)(1)(iv)(A) for using flexible cords as a substitute for the fixed wiring of a structure;

and 2) an other-than-serious violation of 29 C.F.R. § 1904.41(a)(1)(i) for failing to electronically submit the Summary of Work-Related Injuries and Illnesses (OSHA 300A form) by March 2, 2024. Exs. J-1, J-2, J-5. The Secretary proposed penalties of \$6,222 and \$2,074, respectively. Exs. J-1, J-2, J-5.

PMWI timely contested the Citation and the proposed penalties, which brought the matter before the independent Occupational Safety and Health Review Commission (Commission) under section 10(c) of the Occupational Safety and Health Act of 1970 (Act), 29 U.S.C. § 659(c). Stip. 3, Jt. Preh'rg Stmt. at 5; Sec'y Br. at 2; Resp't Br. at 6. I held a virtual hearing on March 25, 2025, under the Commission's Simplified Proceedings. 29 C.F.R. § 2200.200, *et seq.* Both parties timely filed briefs.

For the reasons discussed below, Citation 1, Item 1, alleging a flexible cord violation, is **VACATED**; and Citation 2, Item 1, alleging a recordkeeping violation, is **AFFIRMED** with a penalty of \$2,074.

JURISDICTION

The parties stipulated that jurisdiction of this action is conferred upon the Commission pursuant to section 10(c) of the Act, and at all times relevant to this action, PMWI was an employer engaged in a business affecting interstate commerce as defined in section 3 of the Act, 29 U.S.C. §§ 652(3) & (5). Stip. 1-2, Jt. Preh'rg Stmt. at 5; Sec'y Br. at 2; Resp't Br. at 6. Based on the parties' stipulations and the facts presented, PMWI is an employer covered under the Act, and the Commission has jurisdiction over this proceeding.

FINDINGS OF FACT

OSHA's NEP inspection was focused on detecting amputation hazards, but it could identify other violations in plain view while on-site. Tr. 23. OSHA assigned Compliance Safety

and Health Officer (CO) Robert Soden to inspect PMWI's facility at 45 Dundaff Street, Carbondale, Pennsylvania, on May 13, 2024, and PMWI's CEO and Owner Bob Non escorted CO Soden throughout the inspection.¹ Tr. 23; Stip. 4-6, Jt. Preh'rg Stmt. at 5.

During the inspection, CO Soden identified two instances of what he alleged were flexible cord violations involving a milling machine and a bending machine. Tr. 30, 36. CO Soden also identified one instance of a recordkeeping violation. Tr. 49.

The Milling Machine

The milling machine was powered by an appropriately wired flexible cord that was attached to the machine and plugged directly into a wall outlet.² Tr. 30; Ex. J-4. The milling machine also had a four-gang box mounted on its right side. A foot-long braided cable extended from the four-gang box and was plugged into a yellow extension cord, which in turn was plugged into a 120-volt wall outlet. Tr. 31; Exs. J-4, S-6, S-7. OSHA cited PMWI for the "extra yellow cord" that "ran between the cable that attached to the appliance and the actual outlet." Tr. 66-67.

Two cords were plugged into the four-gang box; one cord powered the computer (digital readout) for the milling machine, and the other cord powered the drive for the horizontal mill table. Tr. 32-33, 123-24, 127. The computer (digital readout) on the milling machine was portable and moved among milling machines. Tr. 123-24, 127. The milling machines moved from area to area depending on where they were needed. Tr. 128.

¹ In its brief, PMWI challenges aspects of a separate inspection by a different CO at another PMWI location. Resp't Br. at 8-10, 49-54, 72. Because that inspection is not related to the Citation at issue here, I accord those arguments no weight.

² OSHA did not cite PMWI for this first cord. Tr. 65.

The Bending Machine

The bending machine was powered by a hard-wired main flexible cord that was lying across the floor. Tr. 37; Ex. S-13. The main flexible cord was plugged into a second flexible cord, which was coiled beneath a rolling ladder and connected to a wall outlet. Tr. 37-39; Ex. S-15. The two cords powering the bending machine made a cord set, which is an extension cord set that has “ends on it” used for powering portable equipment. Tr. 141-42. Together, a twist lock connected the cord set so that it could not come apart. Tr. 142; Ex. S-15.

The bending machine rotated on an axis and needed a flexible cord to be moved. Tr. 37. Machines were frequently moved based on projects. Tr. 117-18.

Fixed wiring was attached to multiple walls of the building. Exs. S-2, S-4, S-5, S-7, S-12, S-15. The fixed wiring on the facility’s walls appeared to be in use and actively working. Exs. S-2, S-4, S-5, S-7, S-12, S-15.

Recordkeeping

PMWI employs between 120 to 130 employees and uses the primary North American Industry Classification System (NAICS) code of 332312. Tr. 14, 54; Ex. J-3 at 3. PMWI completed and maintained the OSHA 300A forms for FY21 to FY23 on-site. Tr. 94, 96; Exs. J-8, J-9, J-10. CO Soden collected the OSHA 300A forms during the inspection. Tr. 54. When CO Soden returned to his office, he checked OSHA’s records and discovered PMWI did not electronically submit its OSHA 300A form for FY2023 by March 2, 2024. Tr. 49-50, 55, 109; Ex. J-5 at 2.

Account Manager Leo Skorupa completed the OSHA forms. Tr. 99. Mr. Non signed the OSHA forms. Exs. J-8, J-9, J-10. Mr. Skorupa “never did it [submit the forms] before until this year” because he did not know it had to be submitted online by a specified date. Tr. 108-09. Mr.

Skorupa and Mr. Non supervised an employee who may have submitted the OSHA 300A forms, but Mr. Skorupa could not ask her since she left PMWI in 2018. Tr. 108-09; Ex. S-1 at 2. PMWI had one injury listed on its FY2023 OSHA 300A form. Tr. 94-95; Ex. J-10.

PMWI had a workplace safety committee. Tr. 101-02; Ex. R-22. PMWI's third-party insurance provided monthly training and quarterly safety inspections focused on forklift operations and safety certification. Tr. 76-78, 100; Ex. J-6. It also provided safety surveys as part of a loss control program to renew PMWI's workplace safety certification. Tr. 26-27, 100-06; Exs. J-6 at 1, R-22, R-26, R-27.

DISCUSSION

To prove a violation of an OSHA standard, the Secretary must show by a preponderance of the evidence that: (1) the cited standard applies; (2) the employer failed to comply with the terms of the cited standard; (3) employees had access to the violative condition; and (4) the cited employer either knew or could have known with the exercise of reasonable diligence of the violative condition. *Astra Pharma. Prods.*, 9 BNA OSHC 2126, 2129 (No. 78-6247, 1981), *aff'd in relevant part*, 681 F.2d 691 (D.C. Cir. 1980); *Atl. Battery Co.*, 16 BNA OSHC 2131 (No. 90-1747, 1994).

Citation 1, Item 1 (Flexible Cord)

Citation 1, Item 1, alleges a serious violation of 29 C.F.R. § 1910.305(g)(1)(iv)(A) as follows:

Flexible cords were used as a substitute for fixed wiring of a structure:

A) milling machine: on or about 5/15/24, employees were exposed to shock hazards while operating the milling machine due to an extension cord being used to power a 4 gang outlet box attached to the machine.

B) bending area: on or about 5/15/24, employees were exposed to shock hazards while working and walking through the bending area due to an electrical cord being [sic] supplying power from an outlet to the permanent cord used to power a rotating pipe bending machine.

Ex. J-1.

The cited standard provides:

Unless specifically permitted otherwise in paragraph (g)(1)(ii) of this section, flexible cords and cables may not be used . . . [a]s a substitute for the fixed wiring of a structure.

29 C.F.R. § 1910.305(g)(1)(iv)(A).

Relevant here, section 1910.305(g)(1)(ii) permits the use of flexible cords and cables for the “[c]onnection of stationary equipment to facilitate their frequent interchange.” 29 C.F.R. § 1910.305(g)(1)(ii)(G).

Applicability

“The test for the applicability of any statutory or regulatory provision looks first to the text and structure of the statute or regulations where applicability is questioned.” *Unarco Commercial Products*, 16 BNA OSHC 1499, 1502-03 (No. 89-1555, 1993); *Precision Concrete Constr.*, 19 BNA OSHC 1404, 1406 (No. 99-0707, 2001). The cited standard is within Subpart S, which addresses electrical safety requirements. 29 C.F.R. § 1910.301. The title of 29 C.F.R. § 1910.305 is “wiring methods, components, and equipment for general use,” and paragraph (g)(1) applies generally to “flexible cords and cables.” There is no dispute that PMWI used flexible cords to power both machines.³ Accordingly, the standard applied to PMWI’s use of those flexible cords.

³ Although PMWI argues this was an applicability issue, the argument is more appropriately directed toward the proof of a violation. Resp’t Br. at 11, 71.

Compliance

As noted above, section 1910.305(g)(1)(iv)(A) prohibits the use of “flexible cords and cables” “[a]s a substitute for the fixed wiring of a structure.” 29 C.F.R. § 1910.305(g)(1)(iv)(A). There is no question that PWMI was using flexible cords. To prove the alleged violation of the standard, the Secretary must show that PMWI used the flexible cords as a “substitute” for the “fixed wiring” of a “structure” in the cited instances. The analysis therefore hinges on what is considered “fixed wiring” and what is considered a “structure” under the standard.

Neither party contested the definition of “fixed wiring,” and CO Soden testified “So fixed wiring is just what it is. It’s fixed wiring.” Tr. 67.

OSHA has not defined “structure” for the purposes of the electrical standard. 29 C.F.R. § 1910.399. PMWI contends the cited standard was not violated because the flexible cords here were being used to power machines, and machines are not “structures.” Resp’t Br. at 11, 71. PMWI argues that the term “structure” refers to a building and not a machine. Resp’t Br. at 11. The Secretary argues that the term “structure” should be interpreted to include machines. Sec’y Br. at 8.

“It is axiomatic that OSHA standards must be interpreted in accordance with the natural and plain meaning of their words.” *Bunge Corp.*, 12 BNA OSHC 1785, 1791 (No. 77-1622, 1986) (consolidated). “When determining the meaning of a standard, the Commission first looks to its text and structure,” and “[i]f the wording is unambiguous, the plain language of the standard will govern.” *Jesco, Inc.*, 24 BNA OSHC 1076, 1078 (No. 10-0265, 2013).

“Structure” – when used as a noun – means “something (such as a building) that is constructed,” or “something arranged in a definite pattern of organization.” *Structure*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/structure> (last visited September 10,

2025).⁴ Although electrical standard 1910 Subpart S does not define “structure,” it defines “building” as “[a] structure that stands alone or is cut off from adjoining structures by fire walls with all openings therein protected by approved fire doors.” 29 C.F.R. § 1910.399. In this context, a structure therefore can be a building or a building can be a type of structure.

Consistent with the plain meaning of the terms and definitions above, CO Soden admitted on cross-examination that “[a] structure is a building.” Tr. 66. PMWI’s witness, Vice President of Manufacturing Paul McGraw, agreed and testified that “[a] structure is made up of members that do not move and they’re used for carrying loads. A machine has moving parts and is used for creating items. So they’re not the same...” Tr. 116; Resp’t Br. at 15. As such, the cited standard must be interpreted as “flexible cords and cables may not be used . . . [a]s a substitute for the fixed wiring of a [building].” The next question is whether PMWI was using each of the cited flexible cords “as a substitute for the fixed wiring of a [building].”

Fixed wiring is attached to the walls of the building. Tr. 67. The fixed wiring on the walls of the building appeared to be in use and actively working. Exs. S-2, S-4, S-5, S-7, S-12, S-15. None of the photographs show that the flexible cords were being used “as a substitute” for any of the fixed wiring on the walls of the building. Exs. S-2, S-4, S-5, S-7, S-12, S-15. At most, the photos show the flexible cords were used *in addition to* the fixed wiring on the walls, to power a computer mounted on the milling machine and to extend the length of the bending machine’s permanent cord, but not as a substitute for any of the fixed wiring on the wall of the building. Tr. 32, 37-39, 123-24, 127; Exs. S-2, S-4, S-5, S-7, S-12, S-15.

A closer examination of the two cited instances further indicates that the Secretary’s evidence does not demonstrate a violation of the cited standard.

⁴ “An undefined term’s meaning can be determined by consulting a contemporaneous dictionary.” *Centimark Corp.*, No. 20-0762, 2023 WL 2783505, *5 (OSHRC, Mar. 29, 2023).

Regarding the milling machine, OSHA asserted that a yellow “extension cord” was impermissibly “being used to power a 4-gang outlet box attached to the machine.” Ex. J-1; Tr. 66. While it is undisputed that the yellow extension cord was being used to power the four-gang outlet box attached to the milling machine, the standard does not prohibit the use of an extension cord to power a four-gang outlet. Tr. 31, 67; Ex. S-6. OSHA did not explain how using the yellow extension cord to power the four-gang outlet box amounts to using it “as a substitute” for the “fixed wiring” on the wall of the building. Tr. 67, 71. Moreover, the attached four-gang outlet box was powering the computer (digital readout) and horizontal mill table, not the milling machine itself. Tr. 31, 33.

Regarding the bending machine, according to the Citation, OSHA was concerned with the second “electrical cord” that was “supplying power from an outlet to the permanent cord used to power a rotating pipe bending machine.” Ex. J-1. CO Soden testified that to fix the violation, one could “do a drop pendant” or “simply rewire the outlet on the wall and plug the machine directly into that outlet rather than use a second cord.” Tr. 69. In other words, OSHA was concerned that the machine’s “permanent cord” was not directly plugged into the outlet on the wall but was instead plugged into a second flexible cord that acted as an extension cord, which was plugged into the outlet on the wall of the building. OSHA did not explain how using the second flexible extension cord to connect the bending machine’s permanent cord into the wall outlet amounts to using it “as a substitute” for the “fixed wiring” on the wall of the building. The extension cord was used to extend the bending machine’s permanent hard-wired cord with the cord set. Tr. 141. The evidence does not show that the extension cord was being used “as a substitute” for the “fixed wiring” on the “building.” Ex. S-15.

The Secretary further asserts that the flexible cords were used in a permanent manner and that such use violated the standard. Sec’y Br. at 8-9. When asked to explain the standard and “what it requires,” CO Soden answered that the milling machine was in place for at least six months, “that’s a long time,” and “[t]hat is no longer a temporary installation for that kind of machine.” Tr. 31-32. For the bending machine, CO Soden answered that the flexible extension cord could not be used for “an extended period of time” and that “[t]hose cords are designed and are meant to be for temporary use only.” Tr. 67-68.

On questioning, however, CO Soden did not explain how the prolonged use of the flexible cords constituted a violation. Tr. 31-32, 67-68. The cited standard does not prohibit the use of flexible cords to exceed a specified length of time. 29 C.F.R. § 1910.305. The only period of time quantified in the standard limits the use of cords for Christmas decorative lighting, carnivals, and similar purposes to no more than 90 days. 29 C.F.R. § 1910.305(a)(2)(i)(B). Given this, I disagree with the Secretary’s contention that the flexible cords’ prolonged use proves they were a substitute for a structure’s fixed wiring.

Based on the foregoing, I conclude that the preponderance of the evidence does not establish a violation of the cited standard. The Secretary failed to prove that the flexible cords were used as a substitute for the “fixed wiring” of a “structure.”⁵

Accordingly, Citation 1, Item 1, is **VACATED**.⁶

⁵ Because there is no violation of the cited standard, I do not reach the issue of exposure, knowledge, the exception under 29 C.F.R. § 1910.305(g)(1)(ii)(G), or any affirmative defenses raised by PMWI for Citation 1, Item 1.

⁶ PMWI also argues that the related provisions in the flexible wiring standard further demonstrate that its use of extension cords was not a violation. Resp’t Br. at 30-32; Tr. 15, 66-67. Specifically, PMWI asserts that §1910.305(g)(1)(iv) is aimed at ensuring employers use the proper fixed wiring for buildings, and is not aimed at preventing the use of extension cords. Resp’t Br. at 30-32. The other provisions of section 1910.305(g)(1)(iv) prohibit the use of flexible cords that “run through holes in walls, ceilings, or floors;” “run through doorways, windows, or similar openings;” are “attached to building surfaces;” are

Citation 2, Item 1 (Recordkeeping)

Citation 2, Item 1, alleges an other-than-serious violation of 29 C.F.R. § 1904.41(a)(1)(i)

as follows:

The establishment had 20 or more employees but fewer than 250 employees at any time during the previous year, and the establishment was classified in an industry listed in appendix A to subpart E of this part, and the employer did not electronically submit information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses to OSHA or OSHA's designee by the specified date:

a) 45 Dundaff Street, Carbdondale, PA 18407: On or about March 2, 2024, the employer did not electronically submit injury and illness data to OSHA.

Ex. J-2.

The cited standard provides:

If your establishment had 20–249 employees at any time during the previous calendar year, and your establishment is classified in an industry listed in appendix A to subpart E of this part, then you must electronically submit information from OSHA Form 300A Summary of Work Related Injuries and Illnesses to OSHA or OSHA's designee. You must submit the information once a year, no later than the date listed in paragraph (c) of this section of the year after the calendar year covered by the form.

29 C.F.R. § 1904.41(a)(1)(i).

PMWI did not challenge or offer evidence to contest the Secretary's prima facie case for this recordkeeping violation.

“concealed behind walls, ceilings, or floors;” or are “installed in raceways” except as expressly permitted. 29 C.F.R. §§ 1910.305(g)(1)(iv)(B)-(F). These surrounding provisions are all directed at the physical placement of flexible cords. Section 1910.305(g)(1)(iv)(A) may be read in this context to be similarly directed at preventing the use of flexible wiring in walls, where fixed wiring is appropriate. *See Otis Elevator Co.*, 24 BNA OSHC 1081, 1086-87 n.10 (No. 09-1278, 2013) (reviewing language of the cited provision “along with the structure and context of the standard” to determine the standard's scope), *aff'd*, 762 F.3d 116 (D.C. Cir. 2014). The bending machine, as noted above, is not a structure or physical feature that the flexible cord must run around, through, or over. The two flexible cords, connected to each other, were lying on the floor between the bending machine and the outlet, not attached to building surfaces or concealed behind walls, ceilings, or floors.

Applicability

PMWI employs between 120 to 130 employees. Tr. 14, 108. PMWI uses the primary NAICS code of 332312, which is listed in Appendix A to Subpart C of 29 C.F.R. Part 1904 as being required to submit injury and illness data to OSHA electronically. Tr. 14, 93, 108; Ex. J-3 at 3. The standard applies. PMWI does not contend otherwise.

Compliance

The requirements of the cited standard are simple: “You must [electronically] submit the information once a year, no later than the date listed in paragraph (c) of this section of the year after the calendar year covered by the form [March 2, 2024].” 29 C.F.R. § 1904.41(a)(1)(i); 29 C.F.R. § 1904.41(c). Mr. Skorupa, a PMWI supervisor, testified that he did not submit the OSHA 300A form and was uncertain whether a former employee did so before, and he now understood the requirement to submit it electronically. Tr. 108-109. The Secretary established a violation.

Exposure

The purpose of the recordkeeping obligation is to help OSHA assess the workplace by tracking injury and illness. *See Shaw Global Energy Servs.*, 23 BNA OSHC 2109 (No. 09-0555, 2012) (employer had duty to record mercury toxicity on the OSHA 300 Log and 301 Incident Report under 1926.29(b)(3), *aff’d*, 547 F. App’x 447 (5th Cir. 2013); *see also Gen. Dynamics Corp.*, 15 BNA OSHC 2122, 2132 n.17 (No. 87-1195, 1993) (noting that unabated omissions on OSHA 200 forms affect employees by withholding from them necessary information about their working conditions).

One employee at PMWI suffered a recordable injury or illness in 2023. Exs. J-5 at 2, J-10 at 2. CO Soden testified that the OSHA 300A form is used to create a targeting list for

employers that have high levels of injuries in the workplace, and all PMWI employees would be exposed when the form is not submitted because OSHA would be unaware that an employer may have a high rate of injury. Tr. 55-56. These facts show exposure.

Knowledge

“The fourth element, the knowledge requirement, may be satisfied by proof either that the employer actually knew, or with the exercise of reasonable diligence, could have known of the presence of the violative condition.” *N.Y. State Elec. & Gas Corp. v. Sec’y of Lab.*, 88 F.3d 98, 105 (2d Cir. 1996) (citing *Dover Elevator Co.*, 16 BNA OSHC 1281, 1288 (No. 91-862, 1993)). The Secretary may establish knowledge “by a showing of employer awareness of the physical conditions constituting the violation.” *Phoenix Roofing, Inc.*, 17 BNA OSHC 1076, 1079 (No. 90-2148, 1995). “The actual or constructive knowledge of the employer's foreman or supervisor can be imputed to the employer.” *Jersey Steel Erectors*, 16 BNA OSHC 1162, 1164 (No. 90-1307, 1993), *aff’d*, 19 F.3d 643 (3d Cir. 1994).

PMWI contends OSHA should have provided an outreach program to inform PMWI of updated regulations including the requirement to electronically submit the OSHA 300A form. Tr. 153; Ex. S-1, p. 1. This argument is misplaced. Here, the pertinent question is not whether PMWI knew it was required to submit the OSHA 300A electronically, but whether PMWI knew that it failed to do so. *See Phoenix Roofing*, 17 BNA OSHC at 1079 (“Employer knowledge is established by a showing of employer awareness of the physical conditions constituting the violation.”); *Omaha Paper Stock Co.*, 19 BNA OSHC 1584, 1591 n.16 (No. 99-0353, 2001) (finding that the standard itself provided the employer with the “fair notice” required), *aff’d*, 304 F.3d 779 (8th Cir. 2002).

Here, PMWI submitted an email in response to CO Soden's request for a copy of the system's confirmation that the data for the OSHA 300A form was received.⁷ Ex. S-1, p. 4. In their response, Mr. Non and Mr. Skorupa, both supervisors, conceded that they did not submit the OSHA 300A electronically and offered no evidence to the contrary despite being afforded an opportunity to do so. Ex. S-1, p. 1-2. Mr. Skorupa filled out the OSHA 300 forms and therefore was aware that he had not submitted them online. His knowledge is imputed to PMWI. *See Jersey Steel Erectors*, 16 BNA OSHC at 1164. This evidence establishes the employer's knowledge.

Accordingly, Citation 2, Item 1, is **AFFIRMED**.

Characterization and Penalty

The Secretary characterizes the recordkeeping violation as other-than-serious. Ex. J-2. An other-than-serious violation "is one in which there is a direct and immediate relationship between the violative condition and occupational safety and health but not of such relationship that a resultant injury or illness is death or serious physical harm." *Crescent Wharf & Warehouse Co.*, 1 BNA OSHC 1219, 1222 (No. 1, 1973).

Section 17(j) of the Act requires the Commission to give due consideration to four criteria when assessing penalties: (1) the size of the employer's business, (2) the gravity of the violation, (3) the good faith of the employer, and (4) the employer's prior history of violations. 29 U.S.C. §666(j); *J.A. Jones Construction Co.*, 15 BNA OSHC 2201, 2214 (No. 87-2059, 1993). The Commission determines the appropriate penalty. *Hern Iron Works, Inc.*, 16 BNA OSHC 1619, 1621-23 (No. 88-1962, 1994).

⁷ CO Soden sent an email because Mr. Non did not return any calls and requested the recordkeeping inquiry be conducted by email. Tr. 56-57; Ex. S-1.

The Secretary reduced the proposed penalty by 10 percent for size but did not adjust the penalty for gravity, good faith, or history. Tr. 45; Ex. J-5 at 1. Neither party contested the gravity or the employer's violation history.

Regarding good faith, the Secretary did not reduce it because, according to CO Soden, "when you don't have one [safety program], you can't adjust the penalty for that." Tr. 45; Ex. J-5 at 1; Sec'y Br. at 13, 15. Although PMWI had a workplace safety committee and a third-party insurer that conducted monthly safety meetings and quarterly inspections, the record does not establish that PMWI had its own written safety program. Tr. 25-27, 100-06; Exs. J-6, R-22, R-26, R-27. CO Soden testified that, at the opening conference, Mr. Non said he did not have a safety program.⁸ Tr. 25. CO Soden's contemporaneous notes are consistent with his recollection at hearing. Ex. J-6 at 1. In contrast, when asked if PMWI had a formal written safety program and where it is located, Mr. Skorupa responded with a qualifying answer, "I believe so, yes," but did not state where the written safety plan was located. Tr. 106. I credit CO Soden's testimony over Mr. Skorupa's hesitant testimony and his failure to specify where the written safety plan could be located.

Further, PMWI submitted a Pennsylvania State Workplace Safety Certification which entitled it to receive a discount on its workers' compensation rate, but the employer did not submit its own written safety program. Ex. R-22. Given PMWI's failure to produce its own written safety program, I infer that it did not have a written safety program. *See N. Landing Line Constr. Co.*, 19 BNA OSHC 1465, 1473 (No. 96-0721, 2001) ("[D]eficiencies in [the employer's] response should be taken as establishing that there was no such evidence"). Because

⁸ Mr. Non's hearsay statement was admitted pursuant to the Commission's Simplified Proceedings rules under which the Federal Rules of Evidence do not apply. Commission Rule 209(c), 29 C.F.R. § 2200.209(c).

PMWI did not have its own formal written safety program, I find no reason to reduce the penalty for good faith.

Moreover, although PMWI offered evidence that it had contracted with the third-party insurer to provide a safety program, it did not explicitly request and articulate a specific reason to reduce the proposed penalty for the recordkeeping violation.⁹ As such, I find no reason to depart from the proposed penalty and find the penalty assessed by the Secretary reasonable.

ORDER¹⁰

Based on the foregoing findings of fact and conclusions of law in accordance with Commission Rule 90(a)(1), 29 C.F.R. § 2200.90(a)(1), it is ORDERED that:

1. Citation 1, Item 1, alleging a serious violation of C.F.R. § 1910.305(g)(1)(iv)(A), is **VACATED**.
2. Citation 2, Item 1, alleging an other-than-serious violation of 29 C.F.R. § 1904.41(a)(1)(i), is **AFFIRMED**, and a penalty of \$2,074 is **ASSESSED**.

SO ORDERED.

Dated: November 18, 2025

/s/ Christine Le
Christine Le
Administrative Law Judge

⁹ PMWI minimally challenged the classification and penalty amount for the flexible cord violation but did not brief the recordkeeping penalty. Resp't Br. at 37-46; *see Georgia-Pacific Corp.*, 15 BNA OSHC 1127, 1130 (No. 89-2713, 1991) (issues not briefed will be deemed abandoned).

¹⁰ PMWI requested sanctions under Fed. R. Civ. P. 11. Resp't Br. at 53-56, 71. I construe the request as a motion for sanctions. PMWI failed to submit the motion in a separate document, provide a clear and plain statement of the relief sought and state with particularity the grounds for seeking the order, confer with the Secretary and indicate the Secretary's consent or opposition, and submit a proposed order, as required by Commission Rule 40. 29 C.F.R. § 2200.40. Accordingly, the request for sanctions is **DENIED**.