



United States of America  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

SECRETARY OF LABOR,

Complainant,

v.

SUNBELT RENTALS SCAFFOLD SERVICES,  
LLC DBA SUNBELT RENTALS and its  
successors,

Respondent.

OSHRC DOCKET NO. 23-1768

Appearances:

Carlton Jackson, Esq., Department of Labor, Office of the Solicitor, Dallas, Texas  
For Complainant

Travis W. Vance, Esq., Fisher & Phillips LLP, Charlotte, North Carolina  
J. Micah Dickie, Esq., Fisher & Phillips LLP, Atlanta, Georgia  
For Respondent

Before: Administrative Law Judge Brian A. Duncan

**DECISION AND ORDER**

**Procedural History**

This proceeding is before the U.S. 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).

On June 8, 2023, the Occupational Safety & Health Administration (OSHA) conducted an inspection of a worksite in Port Arthur, Texas after receiving a report that a worker had sustained a

hand injury. As a result of the inspection, OSHA issued a Citation and Notification of Penalty (Citation) to Sunbelt Rentals Scaffold Services, LLC dba Sunbelt Rentals (Respondent or Sunbelt) on November 1, 2023. (Tr. 11; J. Stips. 3, 4). The Citation alleged a single serious violation of the Act related to a June 6, 2023, accident where [redacted] was injured while using a circular saw at the worksite. (Tr. 12, J. Stip. 5; Citation 7). The proposed penalty was \$10,436. (Citation 7). Respondent timely contested the Citation. (Tr. 12; J. Stip. 7).

A trial was conducted on February 4, 2025, in Fannin, Texas. The following individuals testified: (1) Roderick Foreman, OSHA Compliance Safety and Health Officer (CSHO); (2) Joseph Matthews, Yard Associate for Sunbelt; (3) Justin Williams, Yard Foreman for Sunbelt; and (4) Bob Gibson, Safety, Health and Environmental Director for Sunbelt. The parties timely submitted post-trial briefs for consideration.

### **Stipulations & Jurisdiction**

Before the trial, the parties offered eight stipulations underlying the alleged violations in this case. The stipulations were introduced into the trial record and accepted by the Court.<sup>1</sup> (Tr. 10-13).

The parties stipulated that the Commission has jurisdiction over this proceeding pursuant to section 10(c) of the Act and that, at all times relevant to the proceeding, Sunbelt was an employer engaged in a business and industry affecting interstate commerce within the meaning of sections 3(3) and 3(5) of the Act, 29 U.S.C. §§ 652(3) & (5).<sup>2</sup> (Tr. 11; J. Stips. 1, 2). *See Slingluff v. OSHRC*, 425 F.3d 861 (10th Cir. 2005).

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<sup>1</sup> In lieu of reproducing the stipulations in their entirety, the Court will refer to a specific stipulation by referencing it as “J. Stip.”.

<sup>2</sup> The Commission obtained jurisdiction under section 10(c) of the Act upon Sunbelt’s timely filing of a Notice of Contest. 29 U.S.C. § 659(c); *see also Atlas Roofing Co. v. OSHRC, Sec’y of Labor*, 518 F.2d 990, 995 (5th Cir. 1975) (describing “Enforcement Structure of OSHA”) *aff’d*, 430 U.S. 442 (1977).

### **Factual Background**

Sunbelt is an equipment rental company of 2,900 employees with specialty divisions in scaffolding, power, HVAC, temporary structures, tents, and fencing. (Tr. 93, 225-26). The accident that prompted the OSHA inspection occurred at Sunbelt's Valley Forge Project worksite in Port Arthur, Texas (Valley Forge worksite). (Tr. 227). The Valley Forge worksite was a temporary materials staging facility used to supply a nearby Golden Pass LNG Project. (Tr. 36, 227; Exs. R-1, R-2, R-5).

On June 3, 2023, during a pre-work meeting, a Sunbelt yard foreman, Justin Williams, assigned [redacted] (yard helper) and Joseph Matthews (yard associate) to construct the floor for a paint hooch. (Tr. 148-49, 176-77). The paint hooch was a temporary structure built onsite to store and protect paint and other materials from the weather. (Tr. 227-28; Exs. R-2, R-5). The floor construction required nailing plywood boards to wood braces and cutting materials to size with a portable battery-powered circular saw. (Tr. 149, 178-79; Ex. R-2).

The June 3 morning meeting was roughly fifteen to thirty minutes long and included a discussion of the day's job hazards, which were documented in that day's Job Safety Analysis (JSA). (Tr. 160-65; Ex. R-8). During that meeting, [redacted] and Matthews confirmed to Williams that they had experience using a circular saw in previous carpentry work. (Tr. 162, 176-77). The June 3 JSA identified the use of a circular saw as a hazard—under the “special notes” related to hazards, it listed “apply floor to new paint hooch, skilsaw, duplex nails, hammers,” as well as a warning to “use caution when using hand tools.”<sup>3</sup> (Tr. 181-82; Ex. R-8 at 1; *see also*, Ex. R-3). The JSA document used at the morning meeting on the next day of work, June 6, 2023, also identified

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<sup>3</sup> DeWalt was the brand of the circular saw in use; however, it was frequently referred to as a “skilsaw.” The terms “skilsaw” and “circular saw” both refer to the saw that was used in the paint hooch at the Valley Forge worksite on June 6, 2023.

the use of a saw among the day's activities and included a warning to use "extreme caution when handling hammers, nails, and skilsaw." (Tr. 181-82; Ex. R-8 at 3).

During the discussion of the saw's use at the two morning meetings, foreman Williams recalled telling the employees to keep their hands away from the blade, keep both hands on the saw, and have another person brace the board. (Tr. 181-82). Matthews, a yard associate, recalled that Williams asked the employees whether they had used the saw previously, if they were comfortable using the saw, and instructed the crew to be careful with hand placement, to wear safety glasses, and remove gloves while using the saw. (Tr. 162). The June 3 and June 6 JSAs were signed by Williams, Matthews, and [redacted]. (Ex. R-8).

Foreman Williams stayed with [redacted] and Matthews for a while on the first day to ensure they were comfortable with their assignment. (Tr. 177-78). [redacted], a yard helper, used the saw while Matthews assisted by holding the boards in a stable position.<sup>4</sup> (Tr. 12, 47; J. Stips. 5, 6). Williams walked by often and saw that a stack of wood was being used as the surface on which the men placed a board or piece of plywood to be cut. (Tr. 178-79, 194-95; Exs. R-2, R-5). Williams considered the stack of wood a suitable support for cutting because it was a flat, sturdy surface, and the board or plywood piece being cut was held in place by Matthews. (Tr. 179; Ex. R-2).

Although Sunbelt anticipated the circular saw would be used on June 3 (as reflected in the JSA), there is conflicting testimony about whether it was actually used that day.<sup>5</sup> In any event, it is

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<sup>4</sup> [redacted], the injured employee, did not testify at the trial.

<sup>5</sup> The record is clear the saw was in use on Tuesday, June 6, 2023; however, in their testimonies, Williams and Matthews differed about whether the saw was also used on Saturday, June 3, 2023. (Tr. 152-53, 170, 177-79). The JSAs for both Saturday and Tuesday anticipated the use of the saw to construct the paint hooch floor. (Ex. R-8). The Court finds that whether the saw was first used on Saturday or on Tuesday is not material. Because the trial was held approximately 20 months after the accident at the Valley Forge worksite, the Court finds it is reasonable that each witness can recall what generally occurred at the worksite yet not recall exactly which day the saw was first used. Both witnesses were credible in their testimony and appeared to have no intent to deceive. *See Manganas Painting*, 19 BNA OSHC 1102, 1105 (No. 93-1612, 2000) ("These [credibility] findings based on courtroom observation and witness testimony must be given

undisputed the circular saw was used on June 6, 2023. After several cuts had been made the morning of June 6, 2023, [redacted] attempted to cut a strip off the edge of a board without the assistance of Matthews. (Tr. 61; Ex. C-7 at 1). [redacted] held the saw in his right hand and the board in his left hand. (Tr. 61; Ex. C-7 at 1). As he was cutting, the saw “jumped” a few times and then made contact with his hand, cutting six tendons and fracturing a bone. (Tr. 48, 69). [redacted] went to the hospital for treatment. (Tr. 35, 133; Ex. C-7).

### OSHA Inspection

CSHO Rodrick Foreman opened an inspection of Sunbelt’s Valley Forge worksite after OSHA received a report about the hospitalization of an employee. (Tr. 35). The CSHO conducted an opening conference with Patrick Dennison, legal counsel for Sunbelt, at the worksite on June 8, 2023, two days after the accident. (Tr. 35-37; Ex. C-3). The CSHO then walked around the worksite, looked at the circular saw that had been used by [redacted], and photographed the area where the accident occurred. (Tr. 38-39; Exs. R-1, R-2, R-3, R-5). The CSHO determined the saw itself did not have any safety deficiencies.<sup>6</sup> (Tr. 103; Exs. R-2, R-3).

On June 8, 2025, the CSHO interviewed [redacted] and Matthews at the worksite. (Tr. 42). [redacted] told the CSHO that he had worked for Sunbelt for about five weeks and had experience using a power saw from his previous employment as a tree trimmer. (Tr. 48; Ex. C-7). Matthews said he had worked for Sunbelt for about eight months and had previously used a saw in roofing work. (Tr. 168; Ex. C-8).

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considerable weight.”), *aff’d*, 273 F.3d 1131 (D.C. Cir. 2001). The Court finds that Williams observed [redacted] using the saw prior to the accident, whether that was Saturday or Tuesday.

<sup>6</sup> “The parties stipulate to the authenticity of photos of the constructed paint area, also known as a scaffolding [paint] hooch, that were taken by OSHA Compliance Officer Rodrick Foreman during the inspection and photos taken by Sunbelt and produced to CSHO Foreman during the inspection, and testimony is not necessary to establish a foundation for their admission.” (Tr. 12; J. Stip. 8).

In his interview notes, the CSHO wrote that [redacted] said that he had received training from Sunbelt but not on power saws. (Tr. 48, 61-63; Ex. C-7). The CSHO did not have [redacted] review the notes for accuracy and [redacted] did not sign or initial the notes. (Tr. 56-57). The CSHO also recorded notes during his June 8, 2023 interview with Matthews. (Tr. 52; Ex. C-8). Similarly, Matthews did not review or sign the CSHO's interview notes. (Tr. 70-71). On July 25, 2023, the CSHO returned to the worksite to interview Williams, the yard foreman. (Tr. 43; Ex. C-4). During this interview, the CSHO learned that employees received safety training during orientation that was provided by the Houston Area Safety Council (HASC). (Tr. 46-47; Ex. C-4). The CSHO later collected documents from Sunbelt about its safety program. (Tr. 80-81, 85-87; Exs. R-10, R-12, R-13). The CSHO did not get details from HASC about the contents of the training provided to Sunbelt employees. (Tr. 87).

At the end of his investigation, the CSHO concluded that neither [redacted] nor Matthews had been sufficiently trained to recognize and avoid hazards while using a circular saw. (Tr. 88-89).

#### Safety and Training Program

Sunbelt's safety program had a process called "engage for life," with the goal to reduce and eliminate serious injuries and fatalities.<sup>7</sup> (Tr. 237; Ex. R-11). The program included safety engagements where team members made field observations of other team members. (Tr. 237). Employees were coached in the correct way to complete tasks and encouraged to continue safe practices. (Tr. 237-38). Worksites were monitored through safety audits by the safety team and

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<sup>7</sup> Bob Gibson testified on behalf of Sunbelt about its safety and training program. He was the Safety, Health and Environmental Director for Sunbelt's Scaffold Services, Temporary Fence, and Temporary Structures division. (Tr. 225). In his role he oversaw six regional safety managers and was responsible for Sunbelt's safety program, training, and related policies. (Tr. 226-27). Gibson had previously supervised employees who erected scaffolds. (Tr. 226).

management, with checklists and event cards to record any safety issues observed. (Tr. 239-40). Tools were subject to routine safety inspections by the safety team and management. (Tr. 239-40).

All employees, including [redacted] and Matthews, received initial orientation, at which time Sunbelt communicated its safety policy information. (Tr. 230). Employees of the Houston area scaffolding division received Sunbelt's initial orientation, as well as training provided by HASC. (Tr. 230, 238; Exs. R-12, R-13, R-14). [redacted] and Matthews, who were employees of the Houston area scaffolding division, received the HASC training. (Tr. 231, 233-34, 246; Ex. R-14). HASC's training included safety training on hand tools, such as drills and circular saws. (Tr. 231, 250-51; Exs. R-12, R-13). Sunbelt employees were also educated on safety matters through Sunbelt's general safety policy manual<sup>8</sup> and manual of standards. (Tr. 222-23, 237-38; Exs. R-10, R-11). Sunbelt's safety group sent weekly safety topics to the field to educate employees. (Tr. 238). The operator's manual for the DeWalt saw used at the Valley Forge worksite was kept in the storage box with the saw. (Tr. 239).

Sunbelt's safety program also included two risk assessment tools, the JSA form and a Take-10 card, which were used for pre-work planning. (Tr. 238-39; Exs. R-21, R-22 at 6). The JSA was a more detailed assessment tool than the Take-10 card. (Tr. 238-39). In addition to using a daily worksite-related JSA, Sunbelt created JSAs that were dedicated to any task that was considered a routine task. (Tr. 234-36). Routine task JSAs were available to Sunbelt employees through Sunbelt's online portal. (Tr. 234-35). They were also displayed as wall posters in the training rooms and outside shops at each branch location. (Tr. 235; Ex. R-9). Routine task JSAs were also discussed during weekly safety huddles. (Tr. 235).

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<sup>8</sup> According to Gibson, items number 10, 14, 16, and 19 in the general policy manual's power tool safety section are instructions that can relate to a kickback hazard on a power saw. (Tr. 98-100, 257-61; Ex. R-10 at 6).

In 2017, Sunbelt created a JSA dedicated to the hazards associated with using a circular saw (2017 Saw JSA) because Sunbelt determined the use of a circular saw was a routine task for scaffolding work, such as when cutting materials for deck openings and toeboards.<sup>9</sup> (Tr. 229, 234-36; Ex. R-9). The 2017 Saw JSA identified potential hazards affiliated with circular saw use in the scaffolding yard, such as cuts, pinch points, electrical shock, kickbacks, splinters, and eye hazards. (Ex. R-9). The 2017 Saw JSA also included “steps to eliminate or control the hazard” for each hazard related to use of a saw. (*Id.*). For example, for the hazard of kickbacks while cutting materials, the steps to control the hazard included: “ensure the blade is sharp enough for the job,” “use two hands to operate saw,” and “stand to the side while cutting to avoid being struck if a kickback occurs.” (*Id.*). For securing materials, the steps to control included: “lay material on a flat and stable surface” and “never hold a piece of wood in the air while cutting with the other hand.” (*Id.*). The 2017 Saw JSA was displayed on a large wall poster (about 3’ x 4’) in the training room at each branch location. (Tr. 267).

Sunbelt also had a progressive disciplinary policy which ranged from verbal coaching to written warnings to suspensions or terminations depending on the severity of the violation.<sup>10</sup> (Tr. 240-41; Ex. R-15). After his June 6, 2023, accident, [redacted] was counseled about what he had done incorrectly and the proper use of the saw for the future. (Tr. 243).

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<sup>9</sup> The CSHO did not see Sunbelt’s 2017 JSA for use of a circular saw in a scaffold yard before issuing the citation. (Tr. 108; Ex. R-9).

<sup>10</sup> Termination notices issued to 34 employees for failure to follow safety rules over a 12-month period were entered into evidence. (Tr. 241-42; Ex. R-15).



## Discussion

### Citation 1, Item 1

Item 1 of the Citation alleges a serious violation of 29 C.F.R. § 1926.21(b)(2), which states:

The employer shall instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment to control or eliminate any hazards or other exposure to illness or injury.

The Citation sets forth the following description of a single violation of 29 C.F.R. § 1926.21(b)(2):

*29 CFR 1926.21(b)(2): The employer did not instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his/her environment to control or eliminate any hazards or other exposure to illness or injury:*

*a) On or about June 6, 2023, employees constructed a wooden floor using a DEWALT Cordless Circular Saw without being provided effective training and instructions on its proper usage and work setup*

(Citation at 7).

To establish a violation of an OSHA standard, the Secretary must prove: (1) the cited standard applies; (2) the employer failed to comply with the terms of that standard; (3) employees had access 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).

### The Cited Standard Applies

As an employer under the Act, Respondent must comply with the cited standard's requirement to instruct its employees regarding safety hazards. There is no dispute that [redacted] and Matthews were employed by Respondent and working at Respondent's worksite. In the course

of their employment, they used a circular saw, and it is undisputed the saw presented hazards to those employees. (Ex. R-9). The standard applies.

Complainant Failed to Prove the Standard was Violated

The Citation alleges that Respondent did not provide “effective training and instructions” on the “proper usage and work setup” for a DeWalt cordless circular saw used to construct a floor in the paint hooch. (Citation at 7).

To establish noncompliance with a general training standard, Complainant must show that the cited employer failed to provide the instructions that a reasonably prudent employer would have given in the same circumstances. *N&N Contractors, Inc.*, 18 BNA OSHC 2121, 2126 (No. 96-0606, 2000) (citations omitted); *see also Bardav, Inc.*, 24 BNA OSHC 2105, 2112 (No. 10-1055, 2014) (“the reasonably prudent employer test is, and has consistently been, used to determine whether an employer has failed to comply with § 1926.21(b)(2) – that is, to assess the adequacy of the content of the instructions at issue”); *Capform, Inc.*, 19 BNA OSHC 1374, 1376 (No. 99-0322, 2001) (“Under § 1926.21(b)(2), an employer must instruct its employees in the recognition and avoidance of those hazards of which a reasonably prudent employer would have been aware.”) (citation omitted), *aff’d*, 34 Fed. App’x 152 (5th Cir. 2002) (table); *W.G. Fairfield Co.*, 19 BNA OSHC 1233, 1235 (No. 99-0344, 2000) (“In interpreting general standards such as [§§ 1926.20(b)(1) and 1926.21(b)(2)], the Commission has specifically considered whether a reasonable person, examining the generalized standard in light of a particular set of circumstances, can determine what is required, or if the particular employer was actually aware of the existence of the hazard and of a means to abate it.”) (citations omitted).

Respondent argues that its employees were provided with safety training on the use of power tools, including circular saws, that a reasonably prudent employer would provide. (R. Br. 15-16).

Complainant argues that employees were not adequately trained on the hazards of the circular saw, challenges employee Matthews' testimony as unreliable, argues that Respondent's general training program failed to address the saw hazard, and points to the CSHO's worksite interviews of the yard associate, [redacted], and yard helper, Matthews, as support for the violation. (S. Br. 9-11).

At the outset, the Court disagrees with Complainant's claim that Matthews' trial testimony is unreliable because it conflicted with the CSHO's worksite notes from June 8, 2023 and because Matthews could not remember details from his general training. As set forth below, Matthews correctly remembered the information that is relevant to this incident, and his recollection is supported by other witness testimony, training records, and written JSAs. The Court notes that [redacted], the injured employee who actually used the saw, did not testify at trial.

In addition to general orientation training, safety instructions were provided during pre-work meetings held each morning. Matthews specifically recalled morning meetings were held on June 3 and June 6, and his recollection was verified by his signature on the JSA meeting sign-in sheet for each day. (Tr. 160-62; Ex. R-8). Matthews recalled that the yard foreman, Williams, discussed saw safety during those meetings and gave instructions, such as "being careful with your hand placement, always keep your glasses on. When you're making cuts, you want to keep your gloves off and just be careful." (Tr. 162). This testimony is supported by the June 3 and June 6 JSA documents, which reflected that the use of a circular saw was anticipated and discussed. (Tr. 185-87; Ex. R-8).

Matthews' testimony is further supported by the testimony of the yard foreman. For the morning meetings on June 3 and June 6, 2023, the yard foreman, Williams, discussed saw use safety for about 10 minutes and in particular recalled that he had instructed employees to keep two hands on the saw, have a work partner stabilize the board, and avoid binding hazards. (Tr. 181-82, 190;

Ex. R-8). Williams confirmed that everyone at the meeting knew how to use, and previously used, a circular saw. (Tr. 162). The Court finds Williams' testimony consistent and credible. The Court also finds Matthews' testimony that saw safety was included at the morning meetings credible, as evidenced by the written record and Williams' testimony.

Next, Complainant argues that Respondent's training program was deficient because the orientation training modules concerning power tools were too general and failed to include the specific hazards related to a circular saw, including the hazard of kickback.<sup>11</sup> (S. Br. 10-18). This argument is rejected.

As a yard associate, Matthews testified that the general power tools orientation training covered "hammers, saws, drills, impacts. That's basically it." (Tr. 158). Matthews also stated that the general training included "typical safety like hand placement, wear your eye protection, wear your gloves, never back out of a cut." (Tr. 159). Matthews remembered that "the safety" of saw use was discussed during general training but when asked about more specifics, Matthews answered, "I have no recollection right now. I couldn't tell you." (Tr. 158.). The Court finds that Matthews' inability to recall every detail about the general training program does not support Complainant's assertion of inadequate training, when considered with other record evidence.

Gibson, Sunbelt's safety director, testified that the company's general training modules addressed hazards common to all power tools. Gibson pointed out that certain instructions in Sunbelt's general safety manual directly applied to the hazard of kickback for a circular saw. (Tr. 257-61; Ex. R-10 at 6). These included instructions that an employee should "secure work," and

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<sup>11</sup> Sunbelt's employees received the general orientation training online through the HASC. The detailed content of the HASC training modules is not in evidence. The general outline of covered topics, which included power tool safety, is in evidence. (Tr. 232; Ex. R-12). The Court notes that the Secretary did not obtain the detailed training content from the training provider, HASC. (Tr. 252-54).

“not force tool.” (Tr. 260; Ex. R-10 at 6). Beyond the general training, Respondent introduced evidence that hazards related to saw use were addressed in the morning JSA, which included safety instructions related to anticipated hazards for that day’s work. (Ex. R-8).

Finally, Respondent had a 2017 Saw JSA dedicated to the hazards of a circular saw that included “steps to eliminate or control” those hazards. (Ex. R-9). Complainant argues the 2017 Saw JSA was insufficient because it did not emphasize the importance of recognizing the kickback hazard or providing sufficient instructions to control the kickback hazard. (S. Br. 11-13). To the contrary, the 2017 Saw JSA plainly sets forth instructions for eliminating or controlling the kickback hazard with guidance such as: “ensure the blade is sharp enough,” “lay material on a flat and stable surface,” and “never hold a piece of wood in the air while cutting with the other hand.”<sup>12</sup> (Ex. R-9). The 2017 Saw JSA was provided to all employees through the company’s online portal and displayed in each location’s training room and outside shops on a large wall poster. (Tr. 234-35). Sunbelt’s 2017 Saw JSA addressed the hazards and the means to limit the hazards of a circular saw.

Complainant asserts Gibson’s testimony regarding his lack of personal knowledge with respect to whether Matthews or [redacted] had seen or read the 2017 Saw JSA demonstrates that adequate instructions had not been provided. (S. Br. 13; Tr. 255-56). Complainant’s reliance on

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<sup>12</sup> The Secretary argues that because Respondent did not present Matthews with the 2017 Saw JSA, Exhibit R-9, during his trial testimony, the Court should find an adverse inference that Matthews would have testified that he had never seen the document. (S. Br. 14). Nonetheless, the Court notes that Matthews was called as one of the Secretary’s witnesses and, during direct examination, the Secretary could have questioned Matthews regarding the content of Exhibit R-9. (Tr. 19, 145-46). Instead, the Secretary asks the Court to make an adverse inference against Respondent. The Court will not make such an inference. The Secretary has the burden of proof and had the opportunity to question Matthews regarding his familiarity with the information in Exhibit R-9. *See Hartford Roofing Co.*, 17 BNA OSHC 1361, 1365 (No. 92-3855, 1995) (Secretary has burden of proof on four basic elements of violation); *see also, N&N Contractors*, 18 BNA OSHC at 2126-27 (“If the employer rebuts the allegation of a training violation “by showing that it has provided the type of training at issue, the burden shifts to the Secretary to show some deficiency in the training provided.”).

Gibson's testimony is misplaced. Gibson was the scaffolding division safety manager for the corporation and had six regional safety managers reporting to him. (Tr. 225-227). It is unlikely, and Complainant provided no basis to believe, that Gibson should be personally aware if a particular employee had read a particular document or knew that it was posted at the workplace. Additionally, Gibson credibly testified that the 2017 Saw JSA was available through Sunbelt's online portal and that it was also posted in the training room at branch offices and outside shops. (Tr. 234-35). Thus, Gibson's lack of personal knowledge does not prove that Matthews and [redacted] were not familiar with the 2017 Saw JSA.

There is no evidence in the record that discredits the content or distribution of Sunbelt's training materials. Further, both employees assigned to use the saw had received the company's general training, attended the morning safety meetings on June 3 and June 6, 2023, and had access to the 2017 Saw JSA. The Court finds Respondent's training program included instructions on, and ways to control, the hazards of a circular saw. *See Compass Envt'l, Inc.*, 23 BNA OSHC 1132, 1134 (No. 06-1036, 2010) (To prove that an employer's instructions are insufficient to satisfy 29 C.F.R. § 1926.21(b)(2), the Secretary must "establish that the cited employer failed to provide the instructions that a reasonably prudent employer would have given in the same circumstances." (citation omitted)), *aff'd*, 663 F.3d 1164, 1168 (10th Cir. 2011).

Finally, Complainant relies heavily on the CSHO's inspection notes from the interviews with [redacted] and Matthews to prove a violation of the standard. The CSHO documented that [redacted] had told him that there was no prior training for "using the saw." (Ex. C-7). The CSHO wrote that Matthews had said that training had been provided, "but not saws." (Ex. C-8). Yet, the CSHO could not recall if he gave [redacted] a chance to read or verify the written notes, and the notes were not reviewed or signed by either employee. (Tr. 52, 56-57, 70-71; Exs. C-7, C-8).

Because neither [redacted] nor Matthews verified that the notes accurately captured their discussions with the CSHO and because the particular question asked to each is unknown, the notes taken by the CSHO during his interviews are given limited weight.

By contrast, both Matthews and Williams credibly testified at trial about the content of the June 3 and June 6 JSA meetings. Complainant made little attempt to reconcile any potential differences between Matthews' trial testimony and the CSHO's interview notes for Matthews during the trial. The Court will not simply rely on the CSHO's unverified notes. Where there is a conflict between the CSHO's investigation notes and Matthews' trial testimony, the trial testimony is given greater weight.

Overall, Respondent's evidence effectively rebuts Complainant's allegation that employees were not provided with instructions related to the hazards of the circular saw. *N&N Contractors*, 18 BNA OSHC at 2126-27 (citations omitted) ("If the employer rebuts the allegation of a training violation by showing that it has provided the type of training at issue, the burden to the Secretary to show some deficiency in the training provided."). Complainant did not prove a deficiency in the training provided by Sunbelt as compared to what a prudent employer would provide. *Id.* at 2126 ("Secretary must show that the cited employer failed to provide the instructions that a reasonably prudent employer would have given in the same circumstances") (citations omitted). Additionally, Complainant concedes that the information included on the 2017 Saw JSA is "exactly what is required to comply with" the cited standard. (Tr. 107-09, 142; S. Br. 13). The Court finds that Respondent provided instructions and training about the hazards related to the use of a circular saw and Complainant failed to meet her burden of proof in demonstrating any alleged deficiencies in the training. Accordingly, Complainant failed to prove a violation of the cited standard.

#### Employee Exposure and Employer Knowledge

As Complainant failed to establish by a preponderance of the evidence that the cited regulation was violated, the Court will not address employee exposure or employer knowledge of the violative condition.

**ORDER**

Pursuant to Commission Rule 90(a) and based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Citation 1, Item 1, is hereby **VACATED**.

*/s/ Brian A. Duncan*

**Judge Brian A. Duncan**

U.S. Occupational Safety and Health Review Commission

Dated: August 4, 2025