



United States of America  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
1924 Building – Room 2R90, 100 Alabama Street, S.W.  
Atlanta, Georgia 30303-3104

ACTING SECRETARY OF LABOR,

Complainant,

v.

QUICK ROOFING, LLC,

Respondent.

OSHRC Docket No. **23-0745**

Appearances:

Megan A. Carrick, Esq.  
Jarrod C. Nelson, Esq.  
Office of the Solicitor, U.S. Department of Labor, Nashville, TN  
For Complainant

Wayne Duncan  
West Texas Safety Solutions, LLC, Spring, Texas  
For Respondent

Before: Administrative Law Judge Sharon D. Calhoun

**DECISION AND ORDER**

**INTRODUCTION**

Respondent, Quick Roofing, LLC (Quick Roofing), is a construction company which in January 2023 was the roofing subcontractor at a new apartment complex being constructed in Winter Gardens, Florida. (Tr. 52; Exh. J-2 ¶¶ A(1)-(2)). On January 18, 2023, Quick Roofing employees were installing the roof of a three-story building when the Occupational Safety and Health Administration (“OSHA”) conducted a targeted inspection of the construction site. (Tr. 51). During the inspection, OSHA’s Compliance Safety and Health Officer (“CSHO”) Brian Cohen observed a Quick Roofing employee using a portable ladder which appeared to extend less than three feet above the building’s roof. (Tr. 56-57; Exh. C-1).

Following an investigation, CSHO Cohen concluded Quick Roofing had violated a ladder safety standard promulgated for the construction industry pursuant to the Occupational Safety and

Health Act of 1970, 29 U.S.C. § 651, *et seq.* (“the Act”). Therefore, OSHA issued a Citation and Notification of Penalty (“Citation”) alleging one Repeat-Serious violation of 29 C.F.R. § 1926.1503(b)(1) for failing to ensure the ladder’s side rails extended three feet above the building’s roof or otherwise securing the ladder. The Secretary proposed a penalty of \$15,627 for the violation.

Quick Roofing timely filed a Notice of Contest, bringing this matter before the Occupational Safety and Health Review Commission (“Commission”). (Exh. J-2 ¶ A(4)). This Court held a hearing on January 12, 2024, in Orlando, Florida. The parties filed post-hearing briefs on February 26, 2024.

As set forth herein, the preponderance of the evidence demonstrates Quick Roofing’s extension ladder as erected did not comply with the portable ladder standard. Accordingly, Citation 1, Item 1, is **AFFIRMED** as a Repeat-Serious violation of 29 C.F.R. § 1926.1503(b)(1) and a penalty of \$15,627 is assessed.

#### **JURISDICTION AND COVERAGE**

The parties agree Quick Roofing timely contested the Citation, the Commission has jurisdiction over this action, and Quick Roofing is a covered employer under the Act (Exh. J-2 ¶¶ A(4) and B(1)-(2)). Based on these stipulations and the record evidence, the Court finds the Commission has jurisdiction over this proceeding under § 10(c) of the Act, and Quick Roofing is a covered employer under § 3(5) of the Act.

#### **BACKGROUND**

D.R. Horton was the general contractor constructing several apartment buildings at 10025 Hartzog Road in Winter Garden, Florida. (Tr. 51-52). D.R. Horton hired Quick Roofing as the roofing subcontractor for the project. (Tr. 52; Exh. R-16). On January 18, 2023, three Quick Roofing employees were working on the roof of a three-story building near the site’s entrance. (Tr. 52, 57, 60-61, 71; Exh. C-9).

To reach the roof, Quick Roofing’s employees used a portable Louisville extension ladder. (Tr. 58, 60-61, 71, 74; Exh. C-5). Quick Roofing’s crew set the ladder up the morning of January 18, 2023, extending it to approximately 40 feet and placing it against the edge of the roof. (Tr. 59-60, 68, 84; Exh. C-13 at 4). At its top, the ladder rested against the roof edge midway between the second and third rungs from the end. (Tr. 65-67; Exh. C-1).

CSHOs Cohen and Zoraya Roman-Mercado (OSHA safety engineer) inspected the Winter Garden construction site on January 18, 2023, to check for potential hazards such as fall protection, trenching, and electrical work. (Tr. 51, 55, 132). After an opening conference with the general contractor, OSHA's inspectors walked around the worksite for four to five hours. (Tr. 53-55). Towards the end of the walk-around, they observed a Quick Roofing employee climbing the ladder to the roof of the first building. (Tr. 56).

CSHO Cohen did not climb the ladder to measure how far it extended above the edge of the roof. (Tr. 65, 106-07, 144-45). However, based on the number of rungs visible above the roofline and an estimate of 12 inches between rungs, CSHO Cohen determined the ladder did not extend three feet beyond the upper landing surface. (Tr. 74, 120, 146; Exh. C-5). The CSHOs also could not see that the ladder had been secured at its top or a grasping device provided. (Tr. 61, 150-51).

The general contractor contacted Quick Roofing's supervisor, project manager Baldemar Rojas, who had left the site earlier that morning and did not accompany the OSHA inspectors during the walkthrough. (Tr. 79-80, 81, 83). CSHOs Cohen and Roman-Mercado conducted an opening conference with Rojas and interviewed several Quick Roofing employees, including the supervisor. (Tr. 134, 136-37; Exh. C-13).

Following the inspection, CSHO Cohen concluded Quick Roofing had violated 29 C.F.R. § 1926.1503(b)(1). He also discovered Quick Roofing previously had violated the same standard in 2019. (Tr. 96-98; Exh. C-12 at 12, 21). Therefore, OSHA issued the one-item Repeat-Serious Citation giving rise to these proceedings.

## **PRINCIPLES OF LAW**

### *The Secretary's Burden of Proof*

To establish a violation of an occupational safety or health standard, the Secretary has the burden of proving: (1) the applicability of the cited standard, (2) the employer's noncompliance with the standard's terms, (3) employee access to the violative conditions, and (4) that the employer either knew or, with the exercise of reasonable diligence, could have known of the violative conditions. *Atl. Battery Co., Inc.*, 16 BNA OSHC 2131, 2138 (No. 90-1747, 1994); *Am. Wrecking Corp. v. Sec'y of Lab.*, 351 F.3d 1254, 1261 (D.C. Cir. 2003).

### *Applicable Law*

The Commission generally applies precedent of the circuit courts to which a party may appeal. *See Kerns Bros. Tree Serv.*, 18 BNA OSHC 2064, 2067 (No. 96-1719, 2000). The employer and the Secretary may appeal a final decision of the Commission to the federal court of appeals for the circuit in which the violation allegedly occurred or where the employer has its principal office, and the employer also may appeal to the D.C. Circuit. 29 U.S.C. §§ 660(a) and (b). The alleged violations in question took place in Florida, in the jurisdiction of the 11<sup>th</sup> Circuit Court. The Citation and Notification of Penalty was delivered to Quick Roofing's office in Texas, in the 5<sup>th</sup> Circuit Court. The parties have not identified divergences in the relevant circuit courts' precedent which would materially affect the outcome of this case.

### **THE CITATION**

Citation 1, Item 1, alleges:

29 CFR 1926.1053(b)(1): Where portable ladders were used for access to an upper landing surface and the ladder's length allows, the ladder side rails did not extend at least 3 feet (.9 m) above the upper landing surface being accessed.

a) Jobsite: 10025 Hartzog Rd., Winter Garden, FL: the side rails of the ladder (Louisville Extension Ladder) used to access the roof were approximately 24 inches over the landing and was not extended 3-feet, exposing employees to 30 feet fall hazards, on or about January 18, 2023.

Quick Roofing LLC was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.1053(b)(1), which was contained in OSHA inspection number 1388460, citation number 1, item number 1, and was affirmed as a final order on 05-03-2021, with respect to a workplace located at 11902 Ballshire Pine, Humble, TX 77396.

Section 1926.1053(b)(1) provides:

When portable ladders are used for access to an upper landing surface, the ladder side rails shall extend at least 3 feet (.9 m) above the upper landing surface to which the ladder is used to gain access; or, when such an extension is not possible because of the ladder's length, then the ladder shall be secured at its top to a rigid support that will not deflect, and a grasping device, such as a grabrail, shall be provided to assist employees in mounting and dismounting the ladder. In no case shall the extension be such that ladder deflection under a load would, by itself, cause the ladder to slip off its support.

29 C.F.R. § 1926.1053(b)(1).

### *Applicability*

Section 1926.1053(b)(1) is located within Subpart X of the Secretary's Construction standards. That subpart "applies to all stairways and ladders used in construction, alteration, repair (including painting and decorating), and demolition workplaces covered under 29 CFR part 1926 . . ." 29 C.F.R. § 1926.1050(a). The cited requirements "apply to the use of all ladders . . . except as otherwise indicated." 29 C.F.R. § 1026.1053(b). The parties stipulate that Quick Roofing is in the construction industry and that 29 C.F.R. § 1926.1053(b)(1) applies to the company's roofing work. (Exh. J-2 ¶¶ A(2), (5)). Accordingly, the Court finds the standard applies.

### *Compliance with the Standard's Terms*

Section 1026.1053(b)(1) provides two avenues for compliance. First, employers may extend a portable ladder three feet beyond the ladder's upper landing surface. Where that is not possible, employers may alternatively satisfy the standard by securing the ladder's top to a rigid support that will not deflect, and by providing a grasping device for employees to use while getting on and off the ladder's top. 29 C.F.R. § 1926.1053(b)(1).

Quick Roofing contends the Secretary failed to demonstrate the Louisville ladder was deficient in either regard. (Resp't Br. at 5-8). First, Quick Roofing challenges the CSHO's estimate that the ladder extended only 24 inches above the roof's edge because the inspectors failed to measure the ladder's end or rungs and because photographs of the ladder were inconclusive. (Resp't Br. at 5-8). Quick Roofing asserts that because the record does not contain such "empirical evidence," it is not "'implausible' Quick Roofing placed the ladder above the minimum required distance." (Resp't Br. at 8). Second, Quick Roofing asserts the Secretary failed to eliminate the possibility that the ladder was properly attached to the roof with a black rope tied to the ladder's second rung. (Resp't Br. at 9).

Multiple photographs from different angles show the ladder contacting the edge of the roof midway between the ladder's second and third rungs. (Exhs. C-1, C-2, C-3, C-4, C-9). CSHO Cohen thus estimated the ladder extended 24 inches beyond the upper landing surface: six inches from the end of the ladder's side rails to the top rung, 12 inches from the top rung to the second rung, and an additional six inches from the second rung to where the ladder rested against the roof's edge. (Tr. 65-67). Although CSHO Cohen did not confirm his estimates by measuring the Louisville ladder at the worksite, he explained he had experience with Louisville ladders and had measured the distances on their ladders in the past. (Tr. 111, 120). CSHO Cohen further testified

the Louisville ladders comply with standards from the American National Standards Institute (“ANSI”), which provide “[t]he spacing between ladder rungs or steps shall be on 12-inch centers  $\pm 1/8$  inch . . . .” (Tr. 91-92, 105, 117-18, 120; Exh. C-18 at 13). CSHO Cohen referred to the product catalog for Louisville ladders, which states the company “manufactures products in compliance with the applicable safety codes of the American National Standards Institute (ANSI).” (Tr. 89; Exh. C-11 at 7).

Quick Roofing does not present any evidence to contradict CSHO Cohen’s testimony the rungs of Louisville extension ladders are 12 inches apart. Rather, Quick Roofing asserts CSHO Cohen’s estimate is unreliable because OSHA’s ladder standard, in contrast to the ANSI standard, allows the rungs of extension ladders to be spaced 10 to 14 inches apart.<sup>1</sup> (Resp’t Br. at 8). Because Quick Roofing did not present any contradictory evidence, the Court credits CSHO Cohen’s estimate and finds the ladder extended approximately 24 inches above the roof. However, even assuming the Louisville ladder’s rungs were 14 inches apart, the maximum allowed by OSHA standards, the ladder still would only extend approximately 28 inches above the roof. Therefore, even under Quick Roofing’s best-case-scenario, it is not plausible Quick Roofing erected the ladder so it extended 36 inches above the upper landing surface.

Quick Roofing’s second argument similarly lacks evidentiary support. As Quick Roofing notes, photographs of the worksite show a black rope attached to the ladder’s second rung and appearing to run toward the roof. (Exhs. C-1, C-2, C-3, C-4). Neither of the CSHOs could determine whether Quick Roofing had used the rope to secure the ladder to a rigid support. (Tr. 60-61, 101, 148). Both CSHO’s testified, however, they did not see a grabrail or any similar grasping device at the top of the ladder. (Tr. 61, 150-51). Photographs of the worksite confirm no grasping device was available for employees mounting or dismounting the ladder at the roof. (Exhs. C-1, C-2, C-3, C-4). Quick Roofing presented no testimony or other evidence to contradict the photographs or the OSHA witnesses’ testimony that no grasping device was provided. Indeed, Quick Roofing, in its brief, does not address the standard’s requirement that employers provide a grasping device where ladders cannot extend three feet beyond the upper landing surface. (Resp’t Br. at 9). Given the photographic evidence and the un rebutted testimony of the CSHOs, the

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<sup>1</sup> OSHA’s ladder standard provides “[r]ungs, cleats, and steps of portable ladders . . . shall be spaced not less than 10 inches (25 cm) apart, nor more than 14 inches (36 cm) apart, as measured between center lines of the rungs, cleats, and steps.” 29 C.F.R. § 1926.1053(a)(3)(i).

preponderance of the evidence demonstrates no grasping device was available for employees mounting and dismounting the top of the portable ladder at the roof.

Therefore, the Court finds Quick Roofing's portable ladder did not extend three feet above the upper landing surface of the roof, and no grasping device was provided for employees getting on and off the top of the ladder. The Court finds the Secretary has established Quick Roofing did not comply with § 1926.1053(b)(1) through either required method.

*Employee Access to the Violative Condition*

“Exposure to a violative condition may be established either by showing actual exposure or that access to the hazard was reasonably predictable.” *Phoenix Roofing*, 17 BNA OSHC 1076, 1079 (No. 90-2148, 1995), *aff'd*, 79 F.3d 1146 (5th Cir. 1996). Here, CSHO Cohen photographed one Quick Roofing employee standing on the portable ladder and two other employees who had used the ladder to get to the roof. (Tr. 61, 71, 94; Exh.C-9). Therefore, at least three employees were exposed to the hazard presented by the improperly deployed ladder. Quick Roofing has not challenged the exposure element of the Secretary's case.

The Court finds the Secretary has established employee exposure.

*Employer Knowledge*

To prove the knowledge element of a violation, the Secretary must demonstrate the employer's actual knowledge or constructive knowledge of “the conditions constituting the violation.” *Jacobs Field Servs. N.A.*, 25 BNA OSHC 1216, 1218 (No. 10-2659, 2015); *see also ComTran Grp., Inc. v. U.S. Dep't of Labor*, 722 F.3d 1304, 1307-08 (11th Cir. 2013). Constructive knowledge of a violative condition may be demonstrated if a supervisor “could have discovered and eliminated the hazard with the exercise of reasonable diligence.” *Pride Oil Well Serv.*, 15 BNA OSHC 1809, 1814 (No. 87-692, 1992). Finally, a supervisor's actual or constructive knowledge of a violation may be imputed to an employer where other employees are exposed to a violation. *Quinlan v. Sec'y, U.S. Dep't of Labor*, 812 F.3d 832, 837 (11th Cir. 2016); *Angel Bros. Enters., Ltd. v. Walsch*, 18 F.4th 827, 830 (5th Cir. 2019); *Dover Elevator Co.*, 16 BNA OSHC 1281, 1286 (No. 91-862, 1993).

The Secretary alleges Quick Roofing had both actual and constructive knowledge of the violative conditions through the employer's supervisor, Rojas, because Rojas saw or should have seen the improperly deployed ladder. (Sec'y Br. at 11). Quick Roofing does not challenge the knowledge element in its brief.

According to the CSHOs, Rojas told them Quick Roofing's employees deployed the Louisville ladder early on the morning of the inspection. (Tr. 68, 84, 136-37; Exh. C-13 at 4). Rojas's statement indicates he was aware of how and when the ladder was put up. Quick Roofing did not elicit any evidence to refute the testimony of OSHA's witnesses. The Court therefore finds Rojas had actual knowledge the ladder had been deployed, and therefore knew of the conditions constituting the violation.

Furthermore, both CSHOs testified the ladder was in plain sight near the entrance to the worksite, with nothing obstructing the view of it. (Tr. 57-58, 88-89). CSHO Cohen further testified it was obvious to him the ladder had been deployed improperly. (Tr. 89). Given this testimony, the Court finds the violative conditions were readily apparent to anyone who looked, and Rojas should have discovered the violation. *See A.L. Baumgartner Constr. Inc.*, 16 BNA OSHC 1995, 1998 (No. 92-1022, 1994) (finding constructive knowledge where a cited condition is "readily apparent to anyone who looked"); *ComTran Grp.*, 722 F.3d at 1308 (finding supervisor should have known of violative conduct nearby). Accordingly, in the alternative, the Court finds Rojas had constructive knowledge of the violative conditions.

Because Rojas had knowledge of the improperly deployed ladder and multiple employees were exposed to fall hazards as a result of the violation, the supervisor's knowledge is imputed to Quick Roofing. *Quinlan*, 812 F.3d at 837; *Angel Bros.*, 18 F.4th at 830.

The Court finds Quick Roofing had actual and constructive knowledge of the violation.

#### *Characterization of the Violation*

The Secretary characterized the violation of § 1926.1053(b)(1) as repeat and serious. A serious violation is established when there is "a substantial probability that death or serious physical harm could result [from a violative condition] . . ." 29 U.S.C. § 666(k). "This does not mean that the occurrence of an accident must be a substantially probable result of the violative condition but, rather, that a serious injury is the likely result if an accident does occur." *ConAgra Flour Milling Co.*, 15 BNA OSHC 1817, 1824 (No. 88-2572, 1992).

CSHO Cohen testified the violation was characterized as serious because falling from the top of the extension ladder was certain to cause death or "extreme physical harm," including broken bones and "severe trauma to the head and back." (Tr. 94-96). Quick Roofing does not challenge the violation's serious characterization. The Court finds the violation was properly characterized as serious.



A repeat violation is committed where the same standard has been violated more than once and there is substantial similarity of violative elements between the current and prior violations. 29 U.S.C. § 666(a); *D & S Grading Co. v. Sec'y of Labor*, 899 F.2d 1145, 1148 (11th Cir. 1990); *Bunge Corp. v. Sec'y of Lab.*, 638 F.2d 831, 837 (5th Cir. 1981); *Manganas Painting Co.*, 19 BNA OSHC 1102, 1106 (No. 93-1612, 2000), *aff'd* 273 F.3d 1131 (D.C. Cir. 2001). The prior citation on which the repeat violation is based must have become a final order of the Commission. *Bunge Corp.*, 638 F.2d at 837. The Secretary can make a prima facie case of substantial similarity by showing “the prior and present violations are for failure to comply with the same standard.” *Manganas Painting*, 19 BNA OSHC at 1106; *Amerisig Southeast, Inc.*, 17 BNA OSHC 1659, 1660-61 (No. 93-1429, 1996), *aff'd without published opinion*, 117 F.3d 1433 (11th Cir. 1997); *Darling Ingredients, Inc. v. OSHRC*, 84 F.4th 253, 263 (5th Cir. 2023). The burden then shifts to the employer to disprove the similarity of the violative conditions and their associated hazards. *Darling Ingredients*, 84 F.4th at 263; *D & S Grading*, 899 F.2d at 1148; *Manganas Painting*, 273 F.3d at 1135.

On September 24, 2019, OSHA issued Quick Roofing a Citation alleging a repeat violation of 29 C.F.R. § 1926.1053(b)(1). (Exh. C-12 at 12). The Citation alleged that on March 27, 2019, an employee of Quick Roofing was exposed to a fall hazard when the ladder he used to access the roof was not extended at least three feet above the upper landing surface. (*Id.*) The parties ultimately settled the matter, and Quick Roofing withdrew its Notice of Contest to the Citation. (Exh. C-12 at 16-17). The Citation became a final order of the Commission on May 1, 2021. (Exh. C-12 at 18-19).

The prior citation was for a violation of the same standard violated here, 29 C.F.R. § 1926.1053(b)(1). The Secretary therefore has established the substantial similarity of the citations. Quick Roofing does not challenge the repeat characterization and has not disproven the similarity of the violative conditions.

The Court finds the violation was properly characterized as repeat and serious.

#### **PENALTY**

In determining the appropriate penalty for affirmed violations, § 17(j) of the Act requires the Court to give due consideration to four criteria: (1) the size of the employer’s business; (2) the gravity of the violations; (3) the good faith of the employer; and (4) the employer’s prior history of violations. 29 U.S.C. § 666(j). Gravity is the primary consideration and is determined by the

number of employees exposed, the duration of the exposure, the precautions taken against injury, and the likelihood of an actual injury. *J.A. Jones Constr. Co.*, 15 BNA OSHC 2201, 2214 (No. 87-2059, 1993).

The Secretary asserts the gravity of the violation was moderate because several employees were exposed to the fall hazard for several hours, and no precautions had been taken to address the potential hazard. (Sec’y Br. at 12). At least three Quick Roofing employees were exposed to potentially fatal falls because of the ladder violation. The ladder was set up in the morning before OSHA’s inspectors arrived at the worksite and was in place for at least the four to five hours while the inspectors were on site.

CSHO Roman-Mercado testified Quick Roofing is a large employer with approximately 1,800 employees. (Tr. 139). She further explained Quick Roofing did not receive a penalty reduction for good faith due to the violation’s repeat classification. (Tr. 138-39). The Secretary also did not give Quick Roofing a reduction for history because Quick Roofing has a significant history of violations. (Exh. R-22 at 17; Sec’y Br. at 12).

For repeat Citation 1, Item 1, the Secretary proposed a penalty of \$15,627. Quick Roofing has not challenged the Secretary’s gravity assessment or the determination it should not receive a penalty reduction for size, good faith, or its history of violations.

The Court finds the evidence supports the Secretary’s penalty assessment. Upon due consideration of the penalty calculation factors enumerated in § 666 (j) of the Act, the Court assesses a penalty in the amount of \$15,627.

### **ORDER**

Based upon the foregoing decision, Citation 1, Item 1, alleging a Repeat violation of 29 C.F.R. § 1926.1503(b)(1), is **AFFIRMED** and a penalty in the amount of **\$15,627** is **ASSESSED**.

**SO ORDERED.**

/s/  
**Sharon D. Calhoun**  
Administrative Law Judge, OSHRC

Dated: November 12, 2024  
Atlanta, GA