

SECRETARY OF LABOR,

Complainant,

v.

JAMES WOMACK, STEVEN WOMACK AND
KENNY WOMACK, INDIVIDUALLY AND
d/b/a WOMACK BROTHERS,

Respondent.

OSHR DOCKET NO. 96-0640

ORDER

This matter comes up on Complainant's motion for reconsideration. Complainant objects to this judge's finding that Complainant failed to prove employee exposure. Complainant never elicited testimony from its witness, Renspurger clearly stating that he entered the cited trench during the period during March 27, 1996 when the sides of the trench extended approximately 5 feet above the top of an eight-foot trench box. Complainant maintains, however, that two statements made by its witness Renspurger, establish that Renspurger, in fact, entered the trench.

In the statements relied upon by Complainant, Renspurger stated that:

We came back from lunch. . . we started to dig, to lay pipe again; and I noticed that the trench was instead of V'd back at the top, it was straight up and down; nothing at all down there above the box. And I hollered up to Tom Calderella why it wasn't V'd back. . . ." (Tr. 103).

* * *

I told him that there was no way I could work in the box or in the trench or none of my people under those conditions; that it was straight up and down. And I hollered up to Dennis Strake to have Robert Mueller come to the top of the trench." (Tr. 105).

By way of clarification, I find that observing Renspurger and hearing his testimony in context during the hearing, it was clear that Renspurger was not in the trench as Calderella was starting to dig, preparing to lay more pipe. It was clear that Renspurger was calling up to Calderella because Calderella was on the back hoe digging the trench. Moreover, it was clear that Renspurger was not standing in the trench telling Calderella that neither he nor his people would go into the trench.

Having reconsidered my decision in this matter, I find that further amendment of my decision in this matter is unwarranted.

Benjamin R. Loye
Judge, OSHRC

Dated: June 2, 1997