

SECRETARY OF LABOR,

Complainant,

v.

McCARSON'S QUALITY COVERING,

Respondent.

OSHRC DOCKET NO. 97-0189

APPEARANCES:

For the Complainant:

Helen J. Schuitmaker, Esq., Office of the Solicitor, U.S. Department of Labor, Chicago, Illinois

Before: Administrative Law Judge: Stanley M. Schwartz

DECISION AND ORDER

This proceeding arises under the Occupational Safety and Health Act of 1970 (29 U.S.C. Section 651 *et seq.*; hereafter called the "Act").

Respondent, McCarson's Quality Covering (McCarson's), at all times relevant to this action maintained a place of business at 517 East Market, Red Bud, Illinois, where it was engaged in roofing. Respondent was using Globe shingles manufactured in Indiana and Minnesota (Tr. 27-28), and so is an employer engaged in a business affecting commerce and is subject to the requirements of the Act.

On December 31, 1996 the Occupational Safety and Health Administration (OSHA) conducted an inspection of McCarson's East Market work site. As a result of that inspection, McCarson's was issued citations alleging violations of the Act together with proposed penalties. By filing a timely notice of contest McCarson's brought this proceeding before the Occupational Safety and Health Review Commission (Commission).

The case was designated for E-Z trial by the Commission, and on May 1, 1997, a hearing was held in St. Louis, Missouri. McCarson's did not appear at the hearing, though it received adequate notice of the hearing location and time (Tr. 4-5). Respondent's Notice of Contest, in which McCarson argues that no employees were exposed to the cited violations, was read into the record (Tr. 6). Following Complainant's

presentation of its case, a decision was rendered from the bench, as provided for under §2200.209(f) of the Commission's Rules of Procedure, and as set forth below.

Alleged Violation of §1926.416(a)(1)

Serious citation 1, item 1 alleges:

At the job site, the employer failed to ensure that live 120/240 volt power lines were either de-energized or guarded prior to authorizing up to four employees to work from a metal ladder jack scaffold. The scaffold's platform was approximately 12 inches away from the power lines.

The cited standard provides:

No employer shall permit an employee to work in such proximity to any part of an electric power circuit that the employee could contact the electric power circuit in the course of work, unless the employee is protected against electric shock by deenergizing the circuit and grounding it or by guarding it effectively by insulation or other means.

Compliance Officer (CO) Leland Darrow testified that upon his arrival on McCarson's work site on December 31, 1996, he observed a ladder-jack scaffold set up against the northeast corner of a single story residential home (Tr. 11; Exh. C-1, C-2). Darrow testified that the 120/240 volt service line entering the house was approximately 12 inches from the ladder-jack scaffold, and that McCarson employees would be exposed to the live wire either while on the scaffold or when using hand tools on the north east portion of the roof (Tr. 20-21). Darrow did not observe any protective sleeves or blankets on site that could be use to cover the power line (Tr. 18). Darrow testified that contact would result in severe electrical shock or electrocution, and/or could cause the employee to fall from the roof and sustain injury (Tr. 21-22).

No employees were working at the time of the inspection; however McCarson, the owner, told Darrow that he had hired 4 employees to remove the preexisting roof and install a new roof, and Leland could see that roofing had already begun (Tr. 15). New sheeting material had been laid down on the roof, and five courses of shingle and one roll of tar paper already applied (Tr. 14-15).

During Darrow's closing conference with Respondent, Mr. McCarson stated that he would contact the power company and have the live wiring guarded (Tr. 18-19).

Alleged Violation of §1926.501(b)(13)

Serious citation 1, item 2a alleges:

At the job site, the employer failed to ensure that up to four employees were provided with conventional fall protection while performing roofing operations on a 10:12 pitch roof with a ground to eave height of approximately 14 feet. The employees were exposed to a serious fall hazard.

The cited standard provides:

Residential construction. Each employee engaged in residential construction activities 6 feet (1.8 m) or more above lower levels shall be protected by guardrail systems, safety net system, or personal fall arrest system unless another provision in paragraph (b) of this section provides for an alternative fall protection measure. . . .

CO Darrow testified that he used an inclinometer to determine the pitch of the roof -- 10:12; the roof was approximately 12 feet from ground to eave (Tr. 22-24). Darrow stated that an employee falling from a height of 12 feet could receive disabling injuries or be killed (Tr. 24).

Darrow did not find any safety harnesses or other fall protection on site (Tr. 18). During the closing conference, McCarson stated that he would obtain personal fall arrest systems for his employees (Tr. 18-19).

Alleged Violation of §1926.503(a)(1)

Serious citation 1, item 2b alleges:

At the job site, the employer failed to train his four employees to recognize, avoid, and/or correct fall hazards associated with residential roofing. The four employees were performing roofing operations on a 10:12 pitch roof with a ground to eave height of approximately 14 feet without the use of conventional fall protection.

The cited standard provides:

The employer shall provide a training program for each employee who might be exposed to fall hazards. The program shall enable each employee to recognize the hazards of falling and shall train each employee in the procedures to be followed in order to minimize these hazards.

CO Darrow testified that it was evident from his conversations with Mr. McCarson, that McCarson was not familiar with OSHA fall protection requirements (Tr. 24). Darrow felt McCarson was incapable of instructing his employees to recognize, avoid or abate the hazards to which they were exposed (Tr. 24).

Findings of Fact & Conclusions of Law

Because Respondent failed to appear, the Complainant's recitation of the facts is adopted in its entirety. I find that the CO's testimony, together with Respondent's admissions during the closing conference, show that:

1. Employees were exposed to an energized, unprotected electric power circuit in the course of their work in violation of §1926.416(a)(1).

2. Employees exposed to fall hazards over 6 feet on a steep pitched roof were not provided with conventional fall protection in accordance with §1926.501(b)(13).

3. A training program conforming to the requirements of §1926.503(a)(1) was not provided for employees exposed to fall hazards.

The cited violations have been established. The proposed penalties are deemed appropriate and will be assessed.

ORDER

1. Serious citation 1, item 1, alleging violation of §1926.416(a)(1) is AFFIRMED, and a penalty of \$750.00 is ASSESSED.

2. Serious citation 1, items 2a and 2b, alleging violations of §1926.501(b)(13) and 503(a)(1), respectively, are AFFIRMED, and a combined penalty of \$750.00 is ASSESSED.

Stanley M. Schwartz
Judge, OSHRC

Dated: