



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.

OSHRC Docket Nos. 04-1091 & 04-1092

BEVERLY HEALTHCARE-HILLVIEW

Respondent.

APPEARANCES:

Howard M. Radzely, Solicitor; Joseph M. Woodward, Associate Solicitor; Charles James, Counsel for Appellate Litigation; Daniel J. Mick, Counsel for Regional Trial Litigation; Mark J. Lerner, Attorney; U.S. Department of Labor, Washington, DC

For the Complainant

Michael S. Glassman, Esq.; Jennifer J. Swartz, Esq.; Dinsmore & Shohl, LLP, Cincinnati, OH

For the Respondent

ORDER

Before: THOMPSON, Chairman; ROGERS, Commissioner.

BY THE COMMISSION:

This case is before the Commission on remand from the United States Court of Appeals for the Third Circuit. *Sec'y of Labor v. Beverly Healthcare-Hillview*, 541 F.3d 193 (3d Cir. 2008). On appeal, the court reviewed the decision by the Commission to vacate two citation items alleging violations of 29 C.F.R. § 1910.1030(f)(1)(ii)(A), a provision of the Bloodborne Pathogens (“BBP”) Standard promulgated by the Occupational Safety and Health Administration. *Beverly Healthcare-Hillview*, 21 BNA OSHC 1684, 2005 CCH OSHD ¶ 32,845 (Nos. 04-1091 & 04-1092, 2006). In an opinion

dated September 4, 2008, the court vacated the Commission's decision. By mandate dated October 27, 2008, the court has remanded the case to the Commission.

The issue in this case was decided by the Administrative Law Judge on cross motions for summary judgment and no material facts are in dispute. Accordingly, given that the court has determined Beverly Healthcare-Hillview had fair notice of the Secretary's interpretation of the cited BBP provision, we affirm Item 1 of Other Citation 2 in Docket No. 04-1091, and Item 2 of Other Citation 1 in Docket No. 04-1092, as alleged, with no penalties proposed or assessed. Additionally, we direct Beverly Healthcare-Hillview to reimburse the two affected employees for their time spent and for travel expenses incurred in receiving post-exposure evaluation and follow-up treatment.

SO ORDERED.

_____/s/_____

Horace A. Thompson III
Chairman

_____/s/_____

Thomasina V. Rogers
Commissioner

Dated: December 3, 2008