

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,	:	
Complainant,	:	
	:	
v.	:	OSHRC Docket 00-1939
	:	
TALON ERECTORS, INC.,	:	
Respondent,	:	
	:	

Appearances:

Theresa C. Timlin, Esquire
Office of the Solicitor
U.S. Department of Labor
Philadelphia, PA
For the Complainant

No Appearances
For the Respondent

BEFORE: MICHAEL H. SCHOENFELD
 Administrative Law Judge

DECISION AND ORDER

Background and Summary of Procedural History

This case arises under the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651-678 (1970) (“the Act”). Between July 5 and July 12, 2000, the Occupational Safety and Health Administration (“OSHA”) visited Respondent’s work site in Breinigsville, Pennsylvania. As a result of the inspection, OSHA issued a citation to Respondent on August 30, 2000, alleging a violation of a construction safety standard appearing in Title 29 of the Code of Federal Regulations (“CFR”). Respondent timely contested the citation. A hearing was held in Washington, D.C., on January 10, 2000.

Jurisdiction

It is alleged and undenied that at all relevant times Respondent has been an employer engaged in construction. There is no dispute that Respondent uses goods or materials which have moved in interstate commerce. I find as fact that Respondent is engaged in a business affecting interstate commerce.

Based on the above finding, I conclude that Respondent is an employer within the meaning of section 3(5) of the Act. Accordingly, the Occupational Safety and Health Review Commission (“the Commission”) has jurisdiction over the parties and the subject matter.

Facts

At the hearing in this matter the Secretary appeared through counsel. Despite several notifications as to the date, time and place of the hearing including two facsimile notices, one certified return-receipt mail notice and several telephone calls to an answering machine at the phone number on Respondent’s stationery, Respondent failed to appear at the hearing.

The Secretary, moved for a decision against Respondent affirming the citation and the proposed penalty on the grounds that Respondent failed to appear at the hearing. In the absence of any mitigating facts or circumstances, Respondent’s failure to appear warrants affirmation of the citation and notification of proposed penalty as issued by the Secretary.

Pursuant to Rule 64, 29 CFR § 2200.64¹, the Secretary’s motion is GRANTED. Accordingly, the citation and notification of proposed penalty are hereby affirmed.

FINDINGS OF FACT

All findings of fact necessary for a determination of all relevant issues have been made above. Fed. R. Civ. P. 52(a). All proposed findings of fact and conclusions of law inconsistent with this decision are hereby denied.

¹ Rule 64 provides:

(a) *Attendance at hearing.* The failure of a party to appear at a hearing may result in a decision against that party.

CONCLUSIONS OF LAW

1. The Occupational Safety and Health Review Commission has jurisdiction over the parties and the subject matter.
2. Respondent was in violation of the construction safety standard at 29 CFR § 1926.704(a) as alleged in Citation 1, Item 1, of the citation.
3. The violation is serious within the meaning of the Act.
4. A civil penalty of \$2,000.00 is appropriate.

ORDER

1. Citation 1, Item 1, is AFFIRMED.
2. A civil penalty of \$2,000.00 is assessed.

/s/

Michael H. Schoenfeld
Judge, OSHRC

Dated: January 22, 2001
Washington, D.C.

