

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of
DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,
Complainant,

vs.

METAL-WELD SPECIALTIES, INC.,
Respondent.

CASE NO. OSAB 95-048
(OSHCO No. M2732)
(Report No. 103863429)

DECISION AND ORDER

This occupational safety and health case is before the Board on a written Notice of Contest filed by METAL-WELD SPECIALTIES, INC. ("Respondent"), to contest a Citation and Notification of Penalty issued by the DIRECTOR OF LABOR AND INDUSTRIAL RELATIONS, via its Division of Occupational Safety and Health ("Complainant"), on June 26, 1995.

The issues to be determined are:

- (1) Whether Respondent violated Standard §12-126-3(b)(4).
 - (a) If so, is the characterization of the violation as "serious" appropriate.
 - (b) If so, is the imposition and amount of the proposed \$1,000 penalty appropriate.

The Citation and Notification of Penalty is affirmed as to the violation of Standard §12-126-3(b)(4), but modified as to the characterization of the violation and the imposition of the proposed penalty.

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FINDINGS OF FACT

1. On May 31, 1995, Complainant inspected Respondent's jobsite in Lihue, Kauai.

2. As a result of this inspection, Complainant issued a Citation and Notification of Penalty (Citation) against Respondent on June 26, 1995, for an alleged serious violation of Standard §12-126-3(b)(4). This safety standard pertains to arc welding cables and connectors.¹ Respondent was assessed a proposed penalty of \$1,000.00.

3. At the time of the inspection, one of Respondent's workers was using an arc welding machine to weld metal columns of a building that was under construction.

The arc welding machine has a cord connected to the power source as well as welding cables. The welding cables, namely, the electrode cable and the ground cable, are connected to terminals, positive and negative, on the machine. At the end of the electrode cable is the electrode, which is used by the worker to weld. Respondent's electrode cable was 500 feet long. The ground cable is attached to the steel framework of the building via a metal clamp at the end of the cable. If there is good metal-to-metal contact, then the equipment is properly grounded. A ground cable normally comes in lengths of 50 feet.

¹Standard §12-126-3(b)(4) provides that "[c]ables in need of repair shall not be used. When a cable, other than the cable lead referred to in section 12-126-3(b)(2) becomes worn to the extent of exposing bare conductors, the portion exposed shall be protected by means of rubber and friction tape or another equivalent insulation."

The electrode cable and the ground cable together form a circuit. When the worker strikes an arc on the grounded building, the building itself is part of the welding circuit. Once the circuit is completed, then the worker can weld.

4. Complainant's basis for citing Respondent for an alleged violation of Standard §12-126-3(b)(4), was that a cable in need of repair was in use. At the time of the inspection, Complainant's compliance officer observed that a welding cable was frayed 20 feet from the end where the cable was connected to the welding machine, exposing the inner bare conductor.²

According to Complainant, the frayed cable was the positive cable, because the compliance officer traced it from the electrode back to the welding machine and believed that it was the positive cable, since it was connected to the positive input of the machine. Under that scenario, the positive cable was the electrode cable and the ground cable was the negative cable.

5. Complainant's basis for characterizing the alleged violation as serious was that the welding machine was in use and the worker who was welding could come in contact with the live bare conductor of the frayed cable and incur an injury such as electrical shock or possible death by ventricular fibrillation.

6. Respondent does not dispute that a violation of the standard occurred, as there was a welding cable with a bare area.

7. Respondent, however, disputes the characterization of the violation as serious, contending that the exposed portion

²The power cord was not the frayed cable.

on the welding cable posed no threat of serious physical harm or death, because it was the ground cable, or the cable connected to the building from the welding machine, that was frayed, not the electrode cable.

8. Respondent's general foreman, John Davis, an experienced ironworker, explained why the frayed cable was the ground cable, and not the electrode cable. Mr. Davis indicated that on the date of the inspection, Respondent's welding machine was running on direct current, rather than alternating current. Because the welding machine was running on direct current, the ground cable was actually the positive cable, whereas the electrode cable was the negative cable.

9. Complainant has not presented evidence to refute Respondent's testimony that the welding machine was running on direct current on the date of the inspection.

10. Mr. Davis indicated that the ground cable was very seldom moved, because normally it would be positioned such that once it was attached to the framework of the building, it would not have to be moved nor would the workers have occasion to touch it.

11. Based on the evidence presented, we find that the frayed cable was the ground cable of Respondent's arc welding machine, and not the electrode cable.

12. Based on the evidence presented, we further find that the probability that serious physical harm or death could result from the frayed, ground cable was remote.

To receive an electrical shock, the worker would have to simultaneously come in contact the electrode and the bare spot on the ground cable. In this case, the likelihood that the worker would come in contact with the electrode and the frayed, ground cable at the same time, was very low, since the ground cable remained relatively fixed, as the worker moved about the worksite with the electrode.

13. The compliance officer acknowledged that if the frayed cable was the ground cable, the probability that the worker would come in contact with the bare area was less than if it was the electrode cable.

14. Complainant did not address whether a monetary penalty was still appropriate, if it was determined that the violation committed by Respondent was not a serious violation.

CONCLUSIONS OF LAW

1. We conclude that Respondent violated Standard §12-126-3(b)(4), as Respondent has admitted that there was a violation of the standard.

a. We conclude that the characterization of the violation as serious is inappropriate, as the probability that death or serious physical harm could result from the violative condition was remote.

b. Because the characterization of the violation as serious is inappropriate and, in the absence of any evidence to contrary, we conclude that the imposition of a monetary penalty is also inappropriate.


ORDER

The Citation and Notification of Penalty is hereby affirmed as to the violation of Standard §12-126-3(b)(4), but modified as to the characterization of the violation and the imposition of the proposed penalty.

Dated: Honolulu, Hawaii, FEB 20 1998.


FRANK YAP, JR., Chairman

EXCUSED
CAROL K. YAMAMOTO, Member


VICENTE F. AQUINO, Member

Leo Young, Esq.
for Complainant

Donald Parks
for Respondent

NOTICE TO EMPLOYER:

You are required to post a copy of this Decision and Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted. Further, you are required to furnish a copy of this Decision and Order to a duly recognized representative of the employees.

I do hereby certify that the foregoing
is a full, true and correct copy of
the original on file in this office.

