

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of	)	CASE NO. OSAB 94-026
DIRECTOR, DEPARTMENT OF LABOR	)	(OSHCO ID M0685)
AND INDUSTRIAL RELATIONS,	)	(Report No. 120636279)
Complainant,	)	
	)	
vs.	)	
	)	
CERTIFIED CONSTRUCTION, INC.	)	
Respondent.	)	
	)	

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 DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

DECISION AND ORDER

This Occupational Safety and Health case is before the Board on appeal by Respondent, CERTIFIED CONSTRUCTION, INC., from the Citation and Notification of Penalty issued by the Director of the Department of Labor and Industrial Relations, Division of Occupational Safety and Health, on December 30, 1993.

Respondent filed a motion to dismiss the Citation and Notification of Penalty on September 20, 1994.

A hearing on the motion was held on October 6, 1994.

For the reasons stated below, we hereby grant Respondent's motion to dismiss the Citation and Notification of Penalty, issued on December 30, 1993, and vacate said citation.

FINDINGS OF FACT

1. On December 30, 1993, the Department of Labor and Industrial Relations, Division of Occupational Safety and Health (hereinafter "DOSH") issued a Citation and Notification of Penalty against Respondent for an alleged repeat violation of



§12-121-4(a) of the Hawaii Occupational Safety and Health Standards ("HOSHS"). DOSH assessed Respondent a penalty of \$1,600.00 for the alleged violation.

2. According to a worksheet prepared by the DOSH inspector who issued the Citation and Notification of Penalty, an employee of Respondent was observed walking on a roof, with a ground-to-eave height of more than 16 feet, without proper fall protection. The worksheet indicated that the employee was on the roof removing nails and checking it for wind damage.

3. The subject employee admitted that he was on the roof without proper fall protection. He was, however, on the roof for the limited purpose of inspecting it for wind damage. During the inspection, he picked up loose nails from the roof.

4. The employee was not involved in any "built-up roofing work" as defined by §12-121-1 of HOSHS. This fact has not been disputed or contradicted by DOSH.

#### CONCLUSIONS OF LAW

Under §12-121-4(a) of HOSHS, employers are required to take specific safety measures during the performance of built-up roofing work on low-pitched roofs with a ground-to-eave height greater than 16 feet. Built-up roofing work is defined by §12-121-1. However, pursuant to §12-121-4(b), such safety measures are not required when a worker is on the roof for the limited purpose of inspecting, investigating, or estimating roof level conditions.

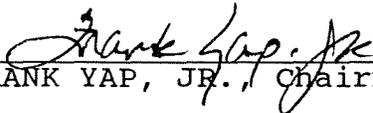
In the instant case, Respondent's employee was on the roof to inspect it for wind damage. He picked up loose nails along the way. He was not involved in any built-up roofing work.

Accordingly, we conclude that Respondent did not violate §12-121-4(a) of HOSHS.

ORDER

The Citation and Notification of Penalty issued on December 30, 1993, is hereby vacated.

Dated: Honolulu, Hawaii, NOV 29 1994.

  
FRANK YAP, JR., Chairman

  
CAROL K. YAMAMOTO, Member

  
CHARLES T. AKAMA, Member

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.