

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of)
 DIRECTOR, DEPARTMENT OF LABOR)
 AND INDUSTRIAL RELATIONS,)
 Complainant,)
)
 vs.)
)
 COUNTY OF HAWAII,)
 DEPARTMENT OF PUBLIC WORKS,)
 TRAFFIC DIVISION,)
 Respondent.)
 _____)

CASE NO. OSAB 94-066(H)
 (OSHCO ID H2733)
 (Inspection #120640826)

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 DEPARTMENT OF LABOR
 STATE OF HAWAII

DECISION AND ORDER

This occupational safety and health case is before the Board on appeal by Respondent, COUNTY OF HAWAII, DEPARTMENT OF PUBLIC WORKS, TRAFFIC DIVISION, from a Citation and Notification of Penalty issued by Complainant, DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, dated October 10, 1994. Respondent filed a notice of contest on November 1, 1994.

The issues before the Board on appeal are:

1. Whether the Hawaii Occupational Safety and Health Division's ("HIOSH") inspection of September 9, 1994, was properly conducted.
2. Whether Respondent violated Standard §12-80-5(a)(4).
 - a. If so, is the characterization of the violation as "serious" appropriate.
 - b. If so, is the imposition and amount of the proposed \$1,625.00 penalty appropriate.



3. Whether Respondent violated Standard §12-80-5(b)(10).

a. If so, is the characterization of the violation as "serious" appropriate.

4. Whether Respondent violated Standard §12-89-4(b)(1).

a. If so, is the characterization of the violation as "serious" appropriate.

b. If so, is the imposition and amount of the proposed \$1,625.00 penalty appropriate.

5. Whether Respondent violated Standard 29 CFR 1926.62(d)(1)(i).

a. If so, is the characterization of the violation as "serious" appropriate.

b. If so, is the imposition and amount of the proposed \$1,625.00 penalty appropriate.

6. Whether Respondent violated Standard 29 CFR 1926.62(d)(1)(iii).

a. If so, is the characterization of the violation as "serious" appropriate.

For the reasons stated below, we affirm the Citation regarding the violations and characterization of the violations but modify the penalty amounts.

FINDINGS OF FACT

1. On October 10, 1994, Complainant, through HIOSH, conducted an occupational safety and health inspection of

Respondent's baseyard at 630 E. Lanikaula Street, Hilo, Hawaii. The inspection, conducted by Kenneth Heu, HIOSH environmental health inspector, took four and a half hours. Included in the inspection was the sign building and paint storage area.

2. Mr. Heu inspected a dual wheel grinding machine located in the sign building. He found the work rest and wheel on the grinding machine had a gap of $3/4$ inch. The maximum allowable opening is $1/8$ inch. Mr. Heu further found the tongue guard and the grinding wheel had a gap of $1/2$ inch. The maximum allowable opening is $1/4$ inch.

3. Mr. Heu testified that the hazard created by these conditions would be workpiece jamming and abrasive wheel breaking which could propel foreign objects into the face, eye, or chest of the operator. This could cause abrasions, cuts, and loss of sight.

4. Mr. Heu inspected a multiple electrical outlet device in the paint storage area. He found a ground pin stuck in one of the ground pin holes of the outlet. Mr. Heu testified that this could cause electric shock, burns, and possible death if someone inadvertently stuck a plug into the outlet. Respondent abated the condition by manually pulling the ground pin out of the outlet.

5. Respondent uses paint containing lead in its sign painting and striping operations. Respondent was not able to provide Mr. Heu with a current initial study measuring the amount of potential lead exposure to its workers from the paint.

Respondent was also not able to provide information showing that each job classification with the highest lead exposure was monitored for a full shift to determine the amount of lead exposure. The only information available was a lead monitoring study of Respondent's traffic markers and signs painting operation that was ten years old. Mr. Heu testified that the study done by Respondent was not acceptable as an initial determination on employee exposure to lead, because it did not comply with the requirements of the lead exposure standard. It was done under ideal test conditions and did not emulate actual working conditions for a full-day shift.

6. Mr. Heu testified that lead exposure occurs through the skin, inhalation, and ingestion. Exposure to lead could cause diminished mental capacity, anemia, hypotension, tremors, neurological damage, and reproductive hazards such as birth defects.

CONCLUSIONS OF LAW

1. We conclude that the inspection of September 9, 1994, was properly conducted. Respondent raised the issue, but it is unclear why Respondent feels the inspection was not conducted properly. There is no evidence or argument in the record submitted by Respondent to show an improper inspection. Complainant sent an inspector to Respondent's baseyard and conducted a four and a half hour inspection. Several violations were found, and Respondent was appropriately cited.

2. We conclude that Respondent violated §12-80-5(a)(4), Hawaii Administrative Rules which provides that:

On offhand grinding machines, work rests shall be used to support the work. They shall be of rigid construction and designed to be adjustable to compensate for wheel wear. Work rests shall be kept adjusted closely to the wheel with a maximum opening of 1/8 inch to prevent the work from being jammed between the wheel and the rest, which may cause wheel breakage. The work rest shall be securely clamped after each adjustment. The adjustment shall not be made with the wheel in motion.

The HIOSH inspector inspected the dual wheel grinding machine and found the opening between the work rest and wheel to be 3/4 inch. The maximum allowable opening is 1/8 inch. Accordingly, Respondent violated §12-80-5(a)(4).

3. We conclude that the characterization of the violation as "serious" is appropriate. Under §396-3, Hawaii Revised Statutes, a serious violation exists if there is a substantial probability that death or serious physical harm could result from the violative condition should an accident occur.

Complainant has established that there was a substantial probability that serious physical harm could result from propelled foreign objects.

4. We conclude that the appropriate penalty is \$425.00.

5. We conclude that Respondent violated §12-80-5(b)(10), Hawaii Administrative Rules, which provides that:

Safety guards of the types . . . where the operator stands in front of the opening, shall be constructed so that the peripheral protecting member can be adjusted to the constantly decreasing diameter of the wheel. The maximum angular exposure above the horizontal plane of the wheel spindle . . . shall never be exceeded, and the distance between the wheel periphery and the adjustable tongue or the end of the peripheral member at the top shall never exceed 1/4 inch.

The HIOSH* inspector inspected the dual wheel grinding machine and found that the adjustable tongue guard was 1/2 inch from the peripheral edge of the grinding wheel. The maximum allowable distance is 1/4 inch. Accordingly, Respondent violated §12-80-5(b)(10).

6. We conclude that the characterization of the violation as "serious" is appropriate. Employees would be exposed to the same hazards as noted in conclusion #3 above. Serious physical harm could result from propelled foreign objects.

7. We conclude that Respondent violated §12-89-4(b)(1), Hawaii Administrative Rules, which provides, in pertinent part, that:

Electrical equipment shall be free from recognized hazards that are likely to cause death or serious physical harm to employees. The safety of electrical equipment shall be determined by using these considerations:
. . . .
(H) Other factors which contribute to the practical safeguarding of employees using or likely to come in contact with the equipment.
. . . .

The HIOSH inspector found a multiple electrical outlet in the paint storage area with a broken ground pin stuck in the one of the ground pin holes of the outlet. This condition could cause death or serious physical harm to employees. Accordingly, Respondent violated §12-89-4(b)(1).

8. We conclude that the characterization of the violation as "serious" is appropriate. Complainant has established that there was a substantial probability that serious physical harm could result from electric shock, burns, and possible death if someone inadvertently stuck a plug into the outlet.

9. We conclude that the appropriate penalty is \$425.00.

10. We conclude that Respondent violated §29 CFR 1926.62(d)(1)(i), Code of Federal Regulations, which provides that:

Each employer who has a workplace or operation covered by this standard shall initially determine if any employee may be exposed to lead at or above the action level.

The HIOSH inspector inspected Respondent's paint operation and found paint containing lead. Respondent was not able to provide Complainant with an acceptable initial determination of employee exposure to lead. The ten year old study which Respondent provided did not meet the requirements of the standard set by HIOSH. Accordingly, Respondent violated §29 CFR 1926.62(d)(1)(i).

11. We conclude that the characterization of the violation as "serious" is appropriate. Complainant has established that there was a substantial probability that serious physical harm could result if there is lead exposure in the work area. Lead exposure occurs through the skin, inhalation, and ingestion. Exposure to lead could cause diminished mental capacity, anemia, hypotension, tremors, neurological damage, and reproductive hazards such as birth defects.

12. We conclude that the appropriate penalty is \$425.00.

13. We conclude that Respondent violated §29 CFR 1926.62(d)(1)(iii), Code of Federal Regulations, which provides that:

With the exception of monitoring under paragraph (d)(3), where monitoring is required under this section, the employer shall collect personal samples representative of a full shift including at least one sample for each job classification in each work area either for each shift or for the shift with the highest exposure level.

Respondent did not conduct monitoring of employees who are potentially exposed to lead in their work areas, either for a full shift for each job classification or the shift with the highest exposure level. Accordingly, Respondent violated §29 CFR 1926.62(d)(1)(iii).

14. We conclude that the characterization of the violation as "serious" is appropriate for the same reason stated in conclusion #11 above.

ORDER

The Citation and Notification of Penalty issued by the Director on October 10, 1994, is hereby affirmed as to all violations and characterization of the violations. The Citation is modified as to the penalties, each of which is reduced to \$425.00, for a total of \$1,275.00.

JUN 13 1996

Dated: Honolulu, Hawaii, _____.


FRANK YAP, JR., Chairman


CAROL K. YAMAMOTO, Member


CHARLES T. AKAMA, Member

Leo B. Young, Esq.
for Complainant

Frederick Giannini, Esq.
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.


