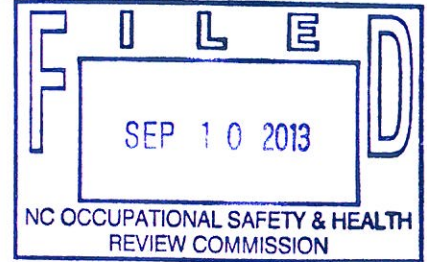


BEFORE THE NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

RALEIGH, NORTH CAROLINA



COMMISSIONER OF LABOR FOR)
THE STATE OF NORTH CAROLINA)
)
COMPLAINANT,)
)
v.)
)
CAROLINA STEEL & STONE, INC.)
)
RESPONDENT.)
_____)

ORDER

OSHANC NO. 2011-5198
INSPECTION NO. 315153957
CSHO ID NO. C1964

THIS MATTER was heard by the undersigned on July 10, 2013 in Charlotte, North Carolina.

The complainant is represented by Linda Kimbell, Assistant Attorney General; the respondent was unrepresented and did not appear, despite being duly notified of the hearing date, time and place by the Commission and the complainant.

Because the respondent was not present for the hearing, the complainant submitted a certified copy of the investigative file in this matter, along with an affidavit of complainant's compliance officer. Absent objection from the respondent, these documents were admitted into evidence. *See, Commissioner v Eagle A, Inc.* OSHANC No. 2002-4200 (2004).

After consideration of the evidence presented, the undersigned makes the following

FINDINGS OF FACT

1. The complainant as Commissioner of Labor is charged with the responsibility for compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina (the "Act").
2. The respondent Carolina Steel & Stone, Inc. is a North Carolina corporation with its principal place of business in Mecklenburg County, North Carolina.

3. Beginning on December 14, 2011, Compliance Safety and Health Officer Lori Kees conducted an accident inspection at respondent's jobsite located at 10626 Park Road, Charlotte, North Carolina.

4. The respondent was the steel erection subcontractor on a project involving a six story addition to the CMC-Pineville medical facility. The general contractor was BE&K Building Group, Inc. and Steelfab, Inc. was the prime subcontractor and structural steel supplier.

5. Steelfab, Inc. contracted with respondent to provide the actual steel erection work.

6. On December 14, 2010, respondent's employee Dustin Miller was injured while performing leading edge work laying and securing metal decking on the second level bay area, which is 30 feet above the ground.

7. Mr. Miller was taking measurements when he slipped off the decking, apparently due in part to rain and ice conditions. He was approximately 40 feet from his anchor point.

8. Mr. Miller was using a retractable personal fall arrest system ("yoyo"). His yoyo was attached to a steel column by a 6 foot strap wrapped around a steel column, about 4 feet above the deck floor.

9. After Mr. Miller slipped and went over the edge of the decking, his yoyo stopped his fall about halfway from the ground. He was suspended there briefly, but the swinging motion of the lanyard caused it to scrape against the sharp edge of the decking, which cut the lanyard and Mr. Miller fell to the ground.

10. As a result of the fall, Mr. Miller injured his back, resulting in paralysis from the waist down.

11. When respondent's employees were trained in laying decking and in using their yoyos, they were instructed to anchor in one location at shoulder height and continuously lay decking, extending their lanyard as they moved away from the anchor point. They could conceivably hit the ground before their lanyard recoiled, under these working conditions.

12. The respondent allowed employees to leave their yoyos outside in the weather, although a manufacturer's label on the yoyo prohibits that practice.

13. The conditions of an employee working on a deck 30 feet above the ground, with fall protection, tied off at shoulder height and extended as much as 40 feet created the possibility of an accident the substantially probable result of which would be death or serious injury to one or more employees.

14. The conditions of an employee working 30 feet above the ground having a free fall of at least 15 feet while working 40 feet away from the anchorage point created the possibility of an accident the substantially probable result of which would be death or serious injury to one or more employee.

15. The training given by respondent to its employees regarding where to tie off their yoyos relative to the decking they were installing created the possibility of an accident the substantially probable result of which would be death or serious injury to one or more employees.

16. The proposed penalties were computed in accordance with the complainant's Operation's Manual.

Based on the foregoing Findings of Fact, the undersigned makes the following

CONCLUSIONS OF LAW

1. The foregoing Findings of Fact are incorporated by reference as Conclusions of Law to the extent necessary to give effect to the provisions of this Order.

2. The respondent is subject to the provisions of the Act.

3. The respondent violated the provisions of 29 CFR 1926.502(d)(11) by allowing employees to rig their yoyos on a stationary anchor point 4 feet above the decking and pulling their lanyards up to 40 feet from the anchor point and allowing the lanyard to come into contact with the sharp edges of the decking, so that the lanyard could be cut or abraded.

4. The respondent violated the provisions of 29 CFR 1926.502(d)(16)(iii) by allowing employees to rig their yoyos and extend their lanyards such that they could fall over an unprotected edge and free fall more than 6 feet.

5. The respondent violated the provisions of 20 CFR 1926.761(b)(2) by failing to train its employees constructing decking to properly recognize hazards relating to anchoring and storing their yoyos and the potential for swing falls.

6. These are all serious violations of the Act.

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS ORDERED as follows:

1. Citation 1, Item 1 is affirmed as a serious violation of 29 CFR 1926.502(d)(11) with a penalty of \$3,500.00.

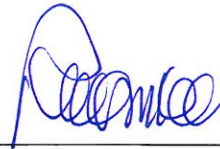
2. Citation 1, Item 2 is affirmed as a serious violation of 29 CFR 1926.502(d)(16)(iii) with a penalty of \$3,500.00.

3. Citation 1, Item 3 is affirmed as a serious violation of 29 CFR 1926.761(b)(2) with a penalty of \$3,500.00

4. These penalties shall be paid within twenty (20) days of the filing date of this Order.

5. All violations not previously abated shall be immediately abated.

This 6th day of September, 2013.



RICHARD M. KOCH
HEARING EXAMINER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served a copy of the foregoing ORDER, upon:

TIMOTHY DAVIS
PRESIDENT
CAROLINA STEEL & STONE INC
6225 CASHION ROAD
HUNTERSVILLE NC 28078

by depositing same the United States Mail, Certified Mail, postage prepaid, at Raleigh, North Carolina, and upon:

TIMOTHY DAVIS
PRESIDENT
CAROLINA STEEL & STONE INC
6225 CASHION ROAD
HUNTERSVILLE NC 28078

LINDA KIMBELL
NC DEPARTMENT OF JUSTICE
LABOR SECTION
P O BOX 629
RALEIGH NC 27602-0629

by depositing a copy of the same in the United States Mail, First Class;

NC DEPARTMENT OF LABOR
LEGAL AFFAIRS DIVISION
1101 MAIL SERVICE CENTER
RALEIGH NC 27699-1101

by depositing a copy of the same in the NCDOL Interoffice Mail.

THIS THE 11th DAY OF September 2013.

OSCAR A. KELLER, JR.
CHAIRMAN


Nancy D. Swaney
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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