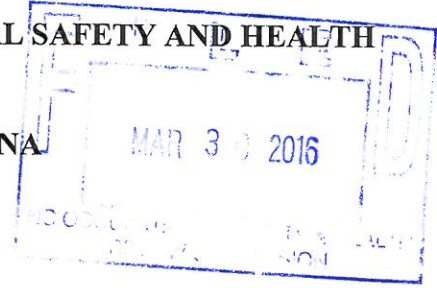


BEFORE THE NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

RALEIGH, NORTH CAROLINA



COMMISSIONER OF LABOR FOR)
THE STATE OF NORTH CAROLINA)
)
COMPLAINANT,)
)
v.)
)
DAVID O'KEEFE d/b/a)
DAVID O'KEEFE ROOFING,)
)
RESPONDENT.)
_____)

ORDER

OSHANC NO. 2015-5720
INSPECTION NO. 317986792
CSHO ID NO. C1964

THIS MATTER was heard by the undersigned on March 16, 2016 in Charlotte, North Carolina. The matter was called for hearing at approximately 10:10 am, after waiting for a representative of respondent to arrive.

The complainant was present through Lee Peacock, Compliance District Supervisor and Lori Kees, Safety Compliance Officer. The complainant was represented by Jason Rosser, Assistant Attorney General.

No one appeared in behalf of the respondent. Mr. Rosser advised the undersigned that he had made contact with David O'Keefe in an attempt to try to discuss and resolve this matter. Mr. O'Keefe was non-responsive with respect to any discussion about this matter.

The file reflects that the respondent was given written notice of the date, time and place of this hearing.

At the outset of the hearing, Mr. Rosser requested a ruling on the interpretation of the respondent's Statement of Employer's/Respondent Position, dated October 12, 2015. That document is signed by David O'Keefe and contains a hand-printed statement "I don't understand how to do this". It also has conflicting check marks concerning the degree to which the respondent is contesting the issues in this matter. Based on the lack of clarity of the respondent's position, the undersigned has determined that the complainant must treat the Statement of Employer's/Respondent's Position as a denial of all allegations in the citation items for purposes of this hearing.

DATABASE
BW

After hearing and receiving the evidence of the complainant, the undersigned makes the following.

FINDINGS OF FACT

1. The complainant as Commissioner of Labor of the State of North Carolina is charged by law with responsibility for compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina (the "Act").

2. The respondent is listed as an individual doing business as David O'Keefe Roofing and is located in Charlotte, North Carolina. The respondent is engaged in the business of industrial and commercial roofing.

3. On May 6, 2015, the complainant's representatives conducted an accident inspection of a jobsite at 601 Johnson Road in Charlotte, where respondent's employees were engaged in replacing a roof and skylights on a truck maintenance building used by Central Transport. The respondent's employees had been working on this project since May 4, 2015.

4. On May 6, 2015, Manuel Perez, one of respondent's employees was on the roof and fell through an open skylight while removing existing roofing materials.

5. This Central Transport maintenance building was 130 feet by 75 feet. It contained a low-slope roof. The skylight openings were 3 feet by 6 feet.

6. Mr. Perez fell some seventeen feet to the concrete floor below, fracturing his pelvis and some ribs and dislocating his shoulder.

7. Safety Compliance Officer Lori Kees obtained permission to enter the worksite and conducted this investigation. She took measurements and photographs, interviewed witnesses and the respondent and recommended the issuance of the citations in this matter.

8. When interviewed, the respondent admitted the following:

a) Neither he nor anyone with his business conducted competent person or regular inspections on this jobsite.

b) The respondent has no safety program relative to roofing work or use of ladders.

c) The respondent had provided safety harnesses, which were on the Central Transport jobsite, but the employees did not use them or use them correctly.

d) The respondent's safety training program consisted of respondent advising his employees to work safely, but with no specific safety training for falls from elevation or for use of ladders.

9. The respondent attempted to install a warning line, but it was at the edge of the roof, was not installed in all areas requiring it, was not installed in conjunction with any other safety procedure and was installed in such a way that the warning line was blown by the wind beyond the edge of the roof of the building.

10. The complainant introduced photographs into evidence showing the warning line as installed by the respondent.

11. The debris accumulated from the removal of the existing roof and skylights was loaded by the respondent's employees into a wheelbarrow and hand-wheeled to the edge of the roof and dumped over the side into an open top dumpster on the ground. While this dumping occurred, the employee performing the dumping was wearing a harness attached to a lifeline that was not anchored, but rather was being held by another employee.

12. The uncontroverted testimony was that for each citation item, the likely probable injury from these violations of the Act was blunt force trauma or death.

13. The proposed penalties were calculated pursuant to the Field Operations Manual. In each calculation, it was determined there was a high severity and a greater probability, with a gravity based penalty of \$7,000.00. The respondent was given credit for size and history totaling 70%, with the exception of Citation 1, Item 2a, in which case a history credit of 10% was not given because this violation was the proximate cause of Mr. Perez's fall. The respondent was given no credit for good faith.

14. There was no evidence in the official file or offered by the respondent in defense of or mitigation of the citation items or the violations alleged in this matter.

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 CPR 1926.20(b)(2) by failing to have a safety program for his employees which provided for regular inspections of his jobsite by a competent person. This violation was a serious violation of the Act.

4. The respondent violated the provisions of 29 CFR 1926.20(b)(1) by not initiating and maintaining a program for fall protection, ladder safety and other provisions of the Act. This violation was a serious violation of the Act.

5. The respondent violated the provisions of 29 CFR 1926.501(b)(4)(i) by failing to provide fall protection for his employees working on a surface more than six (6) feet above a lower level. This violation was a serious violation of the Act.

6. The respondent violated the provisions of 29 CFR 1926.501(b)(10) by failing to provide the safety systems for fall protection provided by that section relative to the respondent's Central Transport jobsite. This violation was a serious violation of the Act.

7. The respondent violated the provisions of 29 CFR 1926.503(a)(1) by not providing fall protection training to employees exposed to such hazards. This violation is a serious violation of the Act.

8. The respondent violated the provisions of 29 CFR 1926.1060(a) by not providing a training program for employees using ladders and stairways. This violation is a serious violation of the Act.

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

1. Citation 1, Item 1a is affirmed as a serious violation of 29 CFR 1926.20(b)(2) with a penalty of \$2,100.00;

2. Citation 1, Item 1b is affirmed as a serious violation of 29 CFR 1926.20(b)(1) with a penalty grouped with Citation 1, Item 1a, above;

3. Citation 1, Item 2a is affirmed as a serious violation of 29 CFR 1926.501(b)(4)(i) with a penalty of \$2,800.00;

4. Citation 1, Item 2b is affirmed as a serious violation of 29 CFR 1926.501(b)(10) with a penalty grouped with Citation 1, Item 2a, above;

5. Citation 1, Item 3 is affirmed as a serious violation of 29 CFR 1926.503(a)(1), with a penalty of \$2,100.00;

6. Citation 1, Item 4 is affirmed as a serious violation of 29 CFR 1926.1060(a) with a penalty of \$2,100.00;

7. The total penalties of \$9,100.00 shall be paid within twenty (20) days of the filing date of this Order; and

8. All violations not immediately abated shall be immediately abated.

This 3rd day of March, 2016.



RICHARD M. KOCH
HEARING EXAMINER