

**BEFORE THE OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION OF NORTH CAROLINA**

COMMISSIONER OF LABOR OF
THE STATE OF NORTH CAROLINA,

COMPLAINANT - PETITIONER,

v.

DOCKET NO. OSHANC 2020-6248
OSHA INSPECTION NO. 318187358

STATESVILLE ROOFING & BUILDING
RESTORATION, INC.
and its successors

ORDER OF THE COMMISSIONERS

FILED

OCT 3 2024

RESPONDENT.

NC OSH Review Commission

DECISION OF THE REVIEW COMMISSION

This appeal was heard at or about 11:00 A.M. on the 8th day of March 2024, in the OAK Courtroom, Lee House, by Paul E. Smith, Chairman, William Rowe, and Terrence Dewberry, members of the North Carolina Occupational Safety and Health Review Commission.

APPEARANCES

Complainant: Jonathan D. Jones, Associate Attorney General; North Carolina
Department of Justice, Raleigh, North Carolina

Respondent: Michael C. Lord; Williams Mullen, Raleigh, North Carolina

The undersigned have reviewed the prior Order based upon the record of the proceedings before the Hearing Examiner and the briefs and arguments of the parties.

The Commission AFFIRMS the Order of Hearing Examiner Weaver.

ISSUES PRESENTED

Whether the Hearing Examiner correctly dismissed the citations?

SAFETY STANDARDS AND/OR STATUTES AT ISSUE

29 CFR 1926.501(b)(10) requires that:

“each employee engaged in roofing activities on low-slope roofs, with unprotected sides and edges 6 feet (1.8 m) or more above lower levels shall be protected from falling by guardrail systems, safety net systems, personal fall arrest systems, or a combination of warning line system and guardrail system, warning line system and safety net system, or warning line system and personal fall arrest system, or warning line system and safety monitoring system.”

29 CFR 1926.503(b)(1) requires that an employer:

When portable ladders are used for access to an upper landing surface, the ladder rails shall extend at least 3 feet above the upper landing surface to which the ladder is used to gain access...

FINDINGS OF FACT

1. Complainant is charged with enforcement of the provisions of the Occupational Safety and Health Act of North Carolina (OSHANC or Act). N.C. Gen. Stat. §§ 95-126 et seq.
2. Respondent is an employer within the meaning of N.C. Gen. Stat § 95-127(10) and is subject to the provisions of OSHANC (N.C. Gen. Stat § 95-128).
3. The undersigned have jurisdiction over this case pursuant to N.C. Gen Stat. § 95-125.
4. On November 1, 2022, a remote hearing was held before Hearing Examiner Weaver.
5. On March 6, 2023, Hearing Examiner Weaver filed an Order dismissing the citations.

6. Filed on April 5, 2023, the Department of Labor timely petitioned the Review Board for a review of the decision of the Hearing Examiner.
7. An Order granting review was filed on April 10, 2023.
8. The oral arguments were heard by the full Commission on March 8, 2024.
9. The Review Commission adopts the Hearing Examiner's findings of facts.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Commission concludes as a matter of law as follows:

1. The foregoing findings of fact are incorporated as conclusions of law to the extent necessary to give effect to the provisions of this Order.
2. The Commission has jurisdiction of this cause, and the parties are properly before this Commission.
3. The Respondent is an employer within the meaning of N.C. Gen. Stat § 95-127 and is subject to the Act. N.C. Gen. Stat § 95-128.
4. The Complainant did not meet its burden of proof.
5. The Commission AFFIRMS the Order of Hearing Examiner Weaver.

DISCUSSION

Respondent contends the Department of Labor never proved the necessary elements of the citations because they did not prove knowledge, and that while a supervisory foreman knew of the violation, he was also a participant in the violation, and his knowledge cannot be imputed to the Employer. Respondent contends the participant supervisor was a "rogue supervisor."

The evidence shows the Employer maintained a comprehensive training system, thoroughly documented in the Hearing Examiner's order, that it enforced in practice. The Employer had a long history of safety compliance; its last OSHA citation occurred nearly twelve years before, after which it implemented its present safety program. The underlying misconduct occurred on a job of exceptionally short duration – a roof repair that took approximately fifteen minutes. A foreman participated in the violation, contrary to his training. Both he and the other participant had attended fall protection training just 39 days before the inspection resulting in the underlying violation. They had attended relevant training several additional times over the preceding 9 ½ months.

Under the facts of this case, the foreman's knowledge cannot be imputed to Statesville Roofing. Complainant therefore has not met its burden of proof.

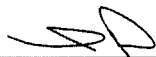
For the reason stated herein, the Review Commission hereby **ORDERS** that the Hearing Examiner's March 6, 2023, Order in this case be, and hereby is, **AFFIRMED**.

This 10/03/2024.



Paul E Smith (Oct 3, 2024 13:40 EDT)

PAUL E. SMITH, CHAIRMAN



Terrence Dewberry (Oct 3, 2024 12:49 EDT)

TERRENCE DEWBERRY, MEMBER



William D Rowe (Oct 3, 2024 13:21 EDT)

WILLIAM D. ROWE, MEMBER

CERTIFICATE OF SERVICE

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

MICHAEL C LORD
WILLIAMS MULLEN
PO BOX 1000
RALEIGH NC 27602-1000

By depositing same in the United States Mail, Certified Mail, Return Receipt Requested, postage prepaid at Raleigh, North Carolina, and upon:


JONATHAN D JONES
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, postage prepaid at Raleigh, North Carolina, and upon:

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

via email.

THIS THE 4 DAY OF October 2024.



Karissa B. Sluss
Docket Administrator
NC Occupational Safety & Health Review Commission
1101 Mail Service Center
Raleigh, NC 27699-1101
TEL.: (984) 389-4132
NCOSHRC@oshrc.labor.nc.gov