

**BEFORE THE NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION
RALEIGH, NORTH CAROLINA**

COMMISSIONER OF LABOR OF THE)
STATE OF NORTH CAROLINA)
)
COMPLAINANT,)
)
v.)
)
KENNETH J. KLIM dba KLIM CONTROLS,)
and its successors,)
)
RESPONDENT.)
_____)

ORDER
OSHANC NO. 2022-6458

FILED

JUN -9 2023

NC OSH Review Commission

THIS MATTER was before the undersigned for hearing via the Lifesize video conference platform on June 7, 2023 at 10:00 am.

Counsel for the complainant is Jonathan D. Jones, Assistant Attorney General; the respondent is *pro se*.

Present for the hearing were counsel for the complainant, Ted Hendrix, the Safety and Health Compliance Officer on this inspection, Laura Crawford, the District Supervisor for North Carolina for OSH and Felicia Hoover, General Counsel for the Review Board. No one for the respondent appeared.

At the appointed time for the hearing, the undersigned waited approximately 20 minutes to see if someone for the respondent signed on. Also, the undersigned asked Ms. Crawford to call the respondent on the number she had for him, which she did, leaving a voicemail about the hearing when no one answered. Felicia Hoover also sent respondent an email about the hearing. As the hearing progressed, no one in behalf of the respondent made an appearance.

Prior to the hearing, the respondent at times had been in touch with the complainant concerning this matter, both in writing and by telephone. However, the respondent has not always been compliant with the Review Board's rules concerning the handling of this matter, as the file reflects. He did not participate in the pre-hearing conference for this matter. As a result, the Review Board office sent the respondent's notice of this hearing by certified mail. It was signed for by Jennifer Klim on April 23, 2023. In addition, counsel for the complainant sent a link to his exhibits to respondent by email on June 5, 2023 and reminded respondent of the hearing date and time.

Because the respondent did not appear for the hearing, counsel for the complainant made a motion for default under the rules. That motion was denied, since the CSHO was available to testify and there were only three factually related citation items.

Based on the evidence, consisting of testimony and admitted documents, the undersigned makes the following

FINDINGS OF FACT

1. The complainant as the Commissioner of Labor is charged by law with compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina ("the Act").
2. The respondent is a sole proprietorship consisting of Kenneth J. Klim.
3. The respondent is in the business of working on HVAC systems. With reference to this accident inspection, the respondent was working as a subcontractor to Hoffman Building Technologies, Inc., on a contract with the Iredell County Schools to upgrade the controls of the HVAC systems in three schools to make them more energy efficient.
4. On January 6, 2022, the respondent was installing new air temperature sensors on an air handler unit at the Lakeshore Middle School in Mooresville, North Carolina. Respondent had entered into an agreement with Tradesman International, LLC to provide him with two temporary employees to assist with the installation of these sensors.
5. Mr. Klim and the two Tradesman workers were working together on this project. They were each at different times sitting on top of ductwork above a suspended tile ceiling over a teachers' workroom in the school, installing the sensors. The part of the ductwork attached to the air handler unit was metal and fixed in position. Some of the other ductwork was flexible.
6. One of the Tradesman workers was Clarence Robinson, an electrician who was 59 years old. While sitting on a piece of fixed ductwork next to the air handler unit, while installing sensors, as directed by Mr. Klim, that piece of ductwork separated from the air handler unit, causing Mr. Robinson to fall approximately 5 feet to the suspended ceiling. The ceiling gave way under his weight, and he fell another approximately 9 feet to a carpeted concrete floor.
7. From this fall, Mr. Robinson sustained a crushed left foot, multiple fractures of the left ankle, six fractured vertebrae, fractured pelvis and bleeding on the brain.
8. There was a protected mezzanine that provided access to the HVAC equipment. However, the ductwork was not protected by guardrails or safety nets and neither of the Tradesman workers was wearing a personal fall arrest system.

9. Beginning January 14, 2022, CSHO Ted Hendrix conducted a limited inspection of the Lakeshore Middle School jobsite incident to this accident. Based on this inspection three serious citation items were issued on April 8, 2022 against respondent.

10. Mr. Hendrix testified to the above facts and provided pictures of the jobsite and the area of Mr. Robinson's fall, which pictures Mr. Hendrix took with his Department-issued camera.

11. Staffing agencies such as Tradesman and the host employer such as respondent are jointly responsible for maintaining a safe work environment for temporary employees and complainant can hold both employers responsible for violative conditions, including a lack of adequate training regarding workplace hazards.

12. The only person onsite to supervise and protect the two Tradesman workers on this job was the respondent, who would know the specific workplace equipment and hazards.

13. The respondent did not determine if the HVAC ductwork would support the weight of employees working while sitting on it.

14. The respondent did not provide any type of fall protection while employees were working while sitting on the HVAC ductwork with an unprotected side or edge more than six feet above a lower level. Such fall protection could include a guardrail system, safety net system or personal fall arrest systems.

15. The respondent did not assure that these employees exposed to a fall hazard were trained by a competent person.

16. These violations of the OSHA standards were serious violations as indicated in part by the nature of the injuries sustained by Mr. Robinson from his fall.

17. The proposed penalties were computed in accordance with the North Carolina Field Operations Manual.

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

CONCLUSIONS OF LAW

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 respondent is subject to the provisions of the Act.

3. The respondent violated the provisions of 29 CFR 1926.501(a)(2), as alleged in Citation No. 1, Item 1a, and such violation was a serious violation of the standard.

4. The respondent violated the provisions of 29 CFR 1926.501(b)(1), as alleged in Citation No. 1, Item 1b, and such violation was a serious violation of the standard.

5. The respondent violated the provisions of 29 CFR 1926.503(a)(2), as alleged in Citation No. 1, Item 2, and such violation was a serious violation of the standard.

Based on the forgoing Findings of Fact and Conclusion of Law, IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. The respondent has violated the provisions of 29 CFR 1926.501(a)(2), which violation is affirmed as a serious violation of the standard, with a penalty of \$2,800.00.

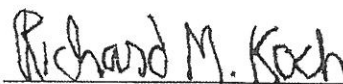
2. The respondent has violated the provisions of 29 CFR 1926.501(b)(1), which violation is affirmed as a serious violation of the standard, with a penalty combined with that of Citation 1, Item 1a.

3. The respondent has violated the provisions of 29 CFR 1926.503(a)(2), which violation is affirmed as a serious violation of the standard, with a penalty of \$2,800.00.

4. The respondent shall pay the total penalties of \$5,600.00 within ten (10) days of the filing date of this Order.

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

This 9th day of June, 2023.



RICHARD M. KOCH
HEARING EXAMINER

CERTIFICATE OF SERVICE

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

KENNETH J. KLIM
KLIM CONTROLS
395 COPPERFIELD LANE
LEXINGTON, NC 27292

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

JONATHAN JONES
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO 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
carla.rose@labor.nc.gov

via email.

THIS THE 14 DAY OF June 2023.



Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
1101 Mail Service Center
Raleigh, NC 27699-1101
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