

COMMONWEALTH OF KENTUCKY
OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION
KOSHRC DOCKET NO. 2169-92

SECRETARY OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

V.

GROUP INDUSTRIES, INC.

RESPONDENT

* * * * *

DECISION AND ORDER

We exercised our authority under our rules of procedure (ROP) section 3 (3) to call this case for review, limited to consideration of serious citation 2, items 5 and 6. We adopt the decision of our hearing officer to the extent it is consistent with this opinion.

Citation 2, item 5, a violation of 29 C.F.R. 1910.307 (b), reads:

The electrical lights in the Sand Blasting Area were not intrinsically safe nor approved for Class II, Division 2 location as defined in 1910.399 (a).

Section 1910.307 (b) says in part:

...installations of equipment in hazardous (classified) locations shall be intrinsically safe, approved for the hazardous (classified) location, or safe or for the hazardous (classified) location.

Equipment (in our case electric lighting) under 1910.307 (b) is regulated when installed in hazardous locations. Further, a serious violation defined in KRS 338.991 (11) exists where ...there is a substantial probability that death or serious

Code of Federal Regulations.

physical harm could result." So in order to prove 'Th serious violation of 1910.307 (b), there must be a showing of a hazard. This conclusion is supported by the standard referenced in the body of the citation, 1910.399, Class II, Division 2 (a):

A Class II, Division 2 location is a location in which:
(a) combustible dust will not normally be in suspension in the air in quantities sufficient to produce explosive or ignitable mixtures, and dust accumulations are normally insufficient to interfere with the normal operation of electrical equipment... (emphasis added)

In 1910.399, Class II, Division 2 (a) situations, combustible dust is not "normally" present while the potential does exist and dust accumulations are not "normally" present but here again the potential does exist. While the standard is not clear whether the "dust accumulations" refer to combustible dust or non-combustible dust, the fact remains that the standard (paragraph (a)) speaks of combustible dust and dust accumulations together.

What 1910.399 (a) applies to is a location where combustible dust is not normally present but may from time to time exist. Because of the potential for combustible dust, then, the requirements of 1910.307 (b) would come into effect.

When we put 1910.307 (b), 1910.399 (a) and KRS 338.991 (11) together, we get a set of requirements. To sustain this citation, we would be compelled to find that a substantial probability that death or serious physical harm could result, that the location where the lights were found was hazardous or potentially hazardous and that while combustible dust would not normally be present the potential existed.

But upon a review of the facts of the case and the brief of

complainant, we find no such facts. Any dust present at the location would have as its source a small sandblaster enclosed and vented to the outside. Michael Brown, the advisor or manager of respondent, testified that while in operation, the sandblaster (used to clean metal gun parts) would produce sparks [presumably with no explosion or fire]. Transcript of the Evidence (TE) 151. Complainant at trial introduced no testimony that silica dust generated by the sandblasting operation is combustible. Complainant in her brief admits there was no attempt at trial to "make that allegation."² The facts of this case lead us to the conclusion that silica dust is not combustible and we so find.

Compliance officer Mike Shoulders testified the globe over the light fixture (which was not in place at the time of the inspection) "...would keep the dust out of the fixture itself where heat or sparks could ignite (emphasis added) the dust." TE 114. While Mr. Shoulders did not say whether he was referring to combustible dust or shop dust, he was concerned with the possibility of its ignition.

We repeat: there is no proof in this case that any silica dust or just plain old dust was combustible. 1910.399, Class II, Division 2 (a) specifically addresses the hazard of combustible dust which is "not normally" in suspension but may at some time appear. Because there is no proof in this case that the lights (the subject of citation 2, item 5) were in a hazardous location and because there is **no** proof that the silica dust ("normally" not

² Page 3 of complainant's brief to this commission.

present) or other shop "dust" is combustible, we dismiss the citation and penalty. After all, with no proof of a potential hazard created by combustible dust or shop dust, there is no requirement that the lights be "intrinsically safe" as defined by 1910.307 (b) and 1910.399 (a).

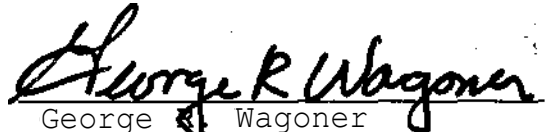
Our hearing officer then found that citation 2, item 6 relied upon an incorrect standard: 1910.305 (b) (1). Respondent in its brief to the hearing officer inadvertently misquoted the standard. This inaccuracy was picked up and relied upon by the hearing officer. While we admit the paragraph numbering scheme in 1910.305 (a) is confusing (the part of 1910.305 which contains respondent's mistaken version of the standard), we are persuaded that 1910.305 (b) (1) reads in part:


Conductors entering boxes, cabinets, or fittings shall also be protected from abrasion...

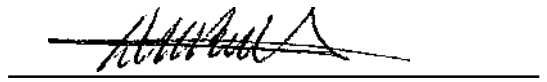
Compliance officer Shoulders testified "...the electrical box on the Minster press did not have the conductors coming from the press to the electrical box protected from abrasion." TE 49. While respondent pointed out in its brief to the hearing officer (p. 14) that Mr. Brown fixed the conduit running to the Minster press, the fact remains the compliance officer did observe the violation as cited and we so find. We therefore sustain citation 2, item 6, and the penalty of \$420.

It is so ordered.

This do7⁴!C day of September, 1994.


George Wagoner
Chairman


Charles E. Yates
Commissioner


Donald A. Butler
Commissioner


Copy of the foregoing Order has been served upon the following parties in the manner indicated:

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This 22nd day of September, 1994.



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