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COMMONWEALTH OF LABOR  
OCCUPATIONAL SAFETY AND HEALTH  
REVIEW COMMISSION

KOSHRC NO. 2495-94

SECRETARY OF LABOR  
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

PITTSBURG TANK & TOWER, INC.

RESPONDENT

\* \* \* \* \*

DECISION AND ORDER  
OF THIS COMMISSION

We granted Pittsburg Tank & Tower's petition for discretionary review according to our rules of procedure (ROP) section 48 (1).<sup>1</sup> We asked the parties to brief several issues but only Pittsburg responded.

Respondent Pittsburg takes exception to that portion of hearing officer Pamela Farmer's decision which sustained serious citation 1, items 1a and 1b. After consideration of all the evidence, the arguments of the parties and the law in this case, we disagree with our hearing officer's findings of fact and conclusions of law which led her to sustain the above citation. We therefore reverse Ms. Farmer's recommended order and dismiss citation 1, items 1a and 1b. Because respondent did not contest citation 2 (items 1 and 2), we affirm it.

KRS 338.071 (4) says this review commission "... shall hear and rule on appeals from citations..." Hearing officers appointed by KRS 338.081 (1) write recommended orders from which affected

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<sup>1</sup> Enacted as section 48 (1), 803 KAR 50:010.

parties appeal to this commission. ROP 48. This commission bears the ultimate responsibility to decide whether an occupational safety and health citation is properly decided. ROP 3 (1).

In cases before this commission, the secretary of labor bears the burden of proof. ROP 43 (1). To sustain that burden, labor must prove its case by a preponderance of the evidence. Armor Elevator Company<sup>2</sup>, CCH OSHD 16,958.

Labor cited respondent for not providing point of operation guards on four "mechanical power presses" and for not installing a single stroke mechanism on the same four "mechanical power presses," an alleged violation of 1910.217. This citation drew a \$500 penalty.

We put quotations around "mechanical power presses" because respondent's manager raised questions at the hearing and in his brief to us whether the machines were ironworkers (not mechanical power presses at all) and thus not covered by 29 CFR<sup>3</sup>1910.217, the cited standard. Ironworkers are very old machines that have multiple work stations. Respondent testified his machines have multiple work stations (meaning work can be performed on different parts of the machine). Transcript of the evidence (TE) 32-33. Compliance officer Alan Loyd testified he thought the machines were mechanical power presses but he said he was "not aware" the

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<sup>2</sup> Federal review commission cases are often of help to this commission as this cited case is to us today. These federal review commission cases are not, however, binding on the commission because we in Kentucky have an independent state occupational safety and health program.

<sup>3</sup> Code of Federal Regulations.

machines had multiple work stations. TE 37. That falls far short of saying they did not have multiple work stations.

Section 1910.217 was cited in this case and covers mechanical power presses only. If the machines are not mechanical power presses, they are covered by 1910.212. That is important to respondent since .212 does not appear on its face to require single stroke mechanisms. If an inapplicable standard is cited, the citation upon which it relies is fatally defective. 803 KAR 2:120 (2) says a citation must refer to the standard or regulation violated. In this case the citation refers to 1910.217 but respondent does not have mechanical power presses, he has ironworkers as we shall discuss below.

OSHA Instruction STD 1-12.27, issued June 30, 1981 (at CCH Employment Safety and Health Guide paragraph 1164, page 735), says ironworkers which are principally identified as having multiple work stations are not covered by 1910.217 but under 1910.212.

We find respondent's testimony his machines had multiple work stations, and not subject to 1910.217, more credible than the compliance officer's testimony he "wasn't aware the machines had multiple work stations. Compliance officer Loyd testified "There are a few ironworkers, other machines of that type, that have a C-frame, but very few of them." TE 37. Of course, photographs entered into evidence clearly indicate the cited machines did have a C frame. Complainant's exhibits, photographs 1, 2, 3 and 6. But Mr. Loyd's testimony about the C frame does not discredit Mr. Turley's about multiple work stations. In fact, we find Mr. Loyd's

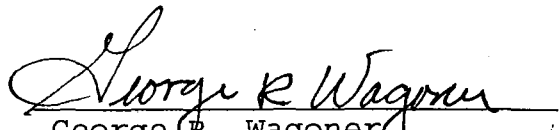
testimony about C frames supports's Mr. Turley's on the ironworker issue because ironworkers may be built with a C frame.

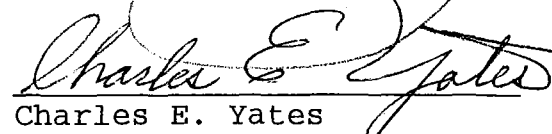
We find the four machines are ironworkers which are covered under 1910.212, not 1910.217. Complainant failed to prove the cited machines were mechanical power presses by a preponderance of the evidence. Since these four machines were mistakenly categorized as mechanical power presses, we conclude the machines were incorrectly cited and dismiss citation 1, items 1a and 1b along with the penalty.

We affirm our hearing officer's decision sustaining citation 2, items 1 and 2, with no penalty. We adopt our hearing officer's recommended order to the extent it agrees with our decision in this case.

It is so ordered.

Entered November 15, 1995.

  
George R. Wagoner  
Chairman

  
Charles E. Yates  
Member

  
Donald A. Butler  
Member

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

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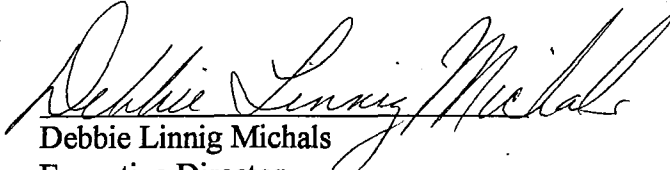
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MR BILL TURLEY  
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This 15th day of November, 1995.

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