

STATE OF VERMONT
OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

COMMISSIONER,
VERMONT DEPARTMENT OF LABOR,
Complainant

Received

JUN 27 2014

v.

VOSHA Review Board
Docket #RB951

ST. ALBANS AUTOMOTIVE, LLC,
Respondent

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER OF THE HEARING OFFICER**

This matter came on for hearing at the offices of the VOSHA Review Board on Wednesday, May 7, 2014 after due notice to the parties. Appearing for the Department was Dirk Anderson, Esq. Mr. Chris Wood appeared for Respondent, St. Albans Automotive, LLC. Based on the evidence presented at the hearing, both documentary and testimonial, the following Findings of Fact are hereby made.

1. Larry Newton appeared and testified at the hearing. He is a Compliance Officer with the Department of Labor, VOSHA Division. He has been in his position for 5.5 years and has done several hundred inspections. He has been trained extensively in the past on safety and health issues and has been involved with construction in past vocations.

2. On July 23, 2012, due to a complaint made to his office, he physically traveled to St. Albans Automotive, LLC for an inspection. Chris Wood was present at such inspection.

3. Per the testimony of Mr. Newton, an "opening conference" took place. He informed Mr. Wood that he had a right to refuse permission for Mr. Newton to inspect the premises. Mr. Wood did give him permission to do a "walk-around" of the business and its premises. Also, Mr. Wood gave Mr. Newton permission to talk to employees and to take

pictures.

4. Many items were listed for violation after such review. They will be addressed separately as follows:

Citation 1, Item 1 re Joints per 29 C.F.R. 1910.106(c)(3)

The regulation as aforementioned states as follows: Joints shall be made liquid tight. Welded or screwed joints or approved connectors shall be used. Threaded joints and connections shall be made up tight with a suitable lubricant or piping compound.

Per the testimony of Mr. Newton, the pipe joints were leaking fuel oil onto the floor in a service bay where welding and cutting operations occurred. Allegedly, it exposed employees to fire hazards.

The leakage apparently was near an ignition source and nearby torches and a bench grinder.

Mr. Newton did credibly show and prove that, pursuant to this first citation as aforementioned, that the employer did not provide a workplace free from recognized hazards when the pipe joints were leaking fuel oil onto the floor. As to the penalty, it was deemed to be serious because of the fuel oil and surrounding danger involved. Potential for hazard was great. However, there was a reduction for "size of company" and there was a 10% reduction because of no prior problems with VOSHA in the last three years. **The penalty of \$1,050.00 is deemed to be reasonable and the citation is hereby affirmed.**

Citation 1, Item 2 (deemed serious)

29 C.F.R. 1910.132(d)(1)(i). The employer shall assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of Personal Protective Equipment (PPE). If such hazards are present, or are likely to be present, the employee shall

select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the Hazard Assessment.

Regarding the aforementioned provision, Mr. Newton found on his inspection that there was no protective equipment. Specifically, he found no gloves and that one employee, at the least, had his own helmet. He found lacking such items as safety glasses and face shields. Put in another way, Mr. Newton found that the employer did not select and have each affected employee use the types of PPE that would protect them from the hazards possible. When he testified, the employer had little defense to this violation.

The violation was deemed serious. Also, there was "medium severity" and "greater probability." Although there could be possible burns, in all probability, death would not result upon a hazard. **The penalty of \$1,050.00 is deemed to be reasonable and the citation is hereby affirmed.**

Citation 1, Item 3 (deemed serious)

29 C.F.R. 1910.132(h)(1). Except as provided in Paragraphs (h)(2) and (h)(6) of this section, the protective equipment, including Personal Protective Equipment (PPE), used to comply with this part, shall be provided by the employer at no cost to employees.

Mr. Newton added this citation to the "Item 2," supra, which has already been discussed. As can be seen from discussions, supra, the Hearing Officer has already affirmed Item 2 and the penalty of \$1,050.00. With all due respect, Item 3 is hereby dismissed. It seems to be "double kill" and has already been dealt with in Item 2. **Therefore, Item 3 is hereby dismissed.**

Citation 1, Item 4 (deemed serious)

29 C.F.R. 1910.157(e)(1). The employer shall be responsible for the inspection, maintenance and testing of all portable fire extinguishers in the workplace.

Mr. Newton credibly testified that fire extinguishers needed to be inspected annually. Per his inspection at the subject business, there were no cards showing that the fire extinguishers had been inspected within the times mandated. In fact, some cards showed that inspections had gone back to 2006. In other words, the inspections were not adequate, to say the least. When speaking about the penalty, Mr. Newton stated that the severity was "medium" and the "probability" was "lesser." **The penalty is hereby deemed to be reasonable and the violation is hereby affirmed relating to faulty or nonexistent inspection of fire extinguishers.**

Citation 1, Item 5

29 C.F.R. 1910.215(a)(4). On offhand grinder machines, work rests shall be used to support the work. They shall be of rigid construction and designed to be adjustable to compensate for wheel wear. Work rests shall be kept adjusted closely to the wheel with a maximum opening of 1/8" to prevent the work from being jammed between the wheel and the rest, which may cause wheel breakage. The work rest shall be securely clamped after each adjustment. The adjustment shall not be made with the wheel in motion.

Per the testimony of Mr. Newton, the employer did not provide a workplace free from recognized hazards when work rests on offhand grinding machines were not kept adjusted closely to the wheel with a maximum opening of 1/8". There was little defense to this violation.

Regarding the penalty, the severity was "medium" and the probability was "lesser." Mr. Newton testified that one could get lacerations and, possibly, broken bones. However, this particular machine was not used all the time. **Therefore, the penalty was set at \$600.00. The penalty is deemed to be reasonable and the violation is hereby affirmed.**

Citation 1, Item 6 (deemed serious)

29 C.F.R. 1910.243(b)(2). Hose and hose connections used for conducting compressed

air to utilization equipment shall be designed for the pressure and service to which they are subjected.

Per the testimony of Mr. Newton, the employer did not provide a workplace free from recognized hazards when the hose connections used for conducting compressed air to utilization equipment were not designed for the pressure and service to which they were subjected. This discussion related to hose connections at the business. Rubber air hoses were used. Typically, clamps are designed to not damage the hose. In this case, per the testimony of Mr. Newton, the wrong clamps were used. Potentially, the hoses could well be damaged. Relating to the penalty regarding this violation, Mr. Newton felt that the severity was "low" and the probability was "lesser" because of the adjustment factors which have been mentioned regarding size, good faith and history. **Therefore, the adjusted penalty was \$450.00. The penalty is hereby deemed to be reasonable and the violation is hereby affirmed.**

Citation 1, Item 7 (deemed serious)

29 C.F.R. 1910.253(b)(4)(iii). Oxygen cylinders in storage shall be separated from fuel gas cylinders or combustible materials a minimum distance of 20 feet or by a non-combustible barrier at least five feet high having a fire resistance rating of at least one half hour.

Per the testimony of Mr. Newton, the employer did not provide a workplace free from recognized hazards when oxygen cylinders in storage were not separated from fuel gas cylinders by at least 20 feet or by a non-combustible barrier. The testimony of Mr. Newton is deemed credible that the cylinders were free-standing and, literally, "side by side." There were no non-combustible barriers in between. There was little defense to this citation.

When speaking about the monetary penalty, the severity was deemed to be "medium" and the probability was deemed to be "lesser." **The penalty is deemed to be reasonable and the**

violation is hereby affirmed.

Citation 1, Item 8 (deemed serious)

29 C.F.R. 1910.303(b)(2). Rusted or labeled equipment shall be installed and used in accordance with any instruction included with the listing and labeling.

In this matter, per the testimony of Mr. Newton, the employer did not provide a workplace free from recognized hazards when Relocatable Power Taps (RPT) were permanently attached to structures and used to provide power to shop equipment. RPT's are not intended to be permanently secured to building structures, tables, workbenches, or similar structures and are not designed to power shop equipment. The citation then referred to UL listing 1363(XBYS), Relocatable Power Taps. As explained by Mr. Newton, the RPT's should be used in an office but not in a manufacturing setting. They are not designed to be permanently attached. In this matter, the power taps were strapped with wire ties and a bench grinder was plugged into them. It is quite easy to overload such power taps. It could well be a fire hazard. In this case the penalty was deemed as follows: "severity low" and "probability lesser." **The penalty of \$450.00 is deemed to be reasonable and the citation is hereby affirmed.**

Citation 1, Item 9 (deemed serious)

29 C.F.R. 1910.303(b)(7)(i). Unused openings in boxes, raceways, auxiliary gutters, cabinets, equipment cases, or housing shall be effectively closed to afford protection substantially equivalent to the wall of the equipment.

In this matter, Mr. Newton testified that the employer did not provide a workplace free from recognized hazards when unused openings in boxes were not effectively closed to afford protection substantially equivalent to the wall of the equipment. For instance, in this matter, electrical housings were placed near a splash sink. Potentially, water could end up on a wall and

wires could be energized. A "knockout" was missing.

Pertaining to a penalty, the severity was deemed to be "medium" and the probability was deemed to be "lesser." **The penalty of \$600.00 is deemed to be reasonable and the violation is hereby affirmed.**

Citation 1, Item 10 (deemed serious)

29 C.F.R. 1910.305(b)(3)(ii). Boxes shall be closed by suitable covers securely fastened in place.

In this case, it was alleged that the employer did not provide a workplace free from recognized hazards when covers on electrical boxes were not suitable or securely fastened in place. As discussed, supra, in Item 9, the issue of unused openings in boxes is being discussed here also. The citation in Item 10 deals with "boxes shall be closed by suitable covers." Item 10 is deemed to be a bit of "piling on." It is close enough in subject to Item 9 that it is the opinion of the Hearing Officer that this particular penalty should be dismissed. It is duplicative.

Therefore, Item 10 should be stricken and no penalty assessed.

Citation 2, Item 1 Violation: "Other"

29 C.F.R. 1910.141(a)(4)(ii). All sweepings, solid or liquid waste, refuse, and garbage shall be removed in such a manner as to avoid creating a menace to health as often as necessary or appropriate to maintain the place of employment in a sanitary condition.

It was alleged that the employer did not provide a workplace free from recognized hazards when sweepings and refuse were not removed in such a manner as to avoid creating a menace to health and safety.

In this matter, Mr. Newton testified that, in his opinion, the shop should have been much cleaner when he inspected it on a Monday morning at 9:00 a.m. However, as credibly testified to

by the employer, the shop was also open on Saturday. It seems reasonable to state that the employer should not be penalized with a violation if they had no time to, potentially, clean the facilities before 9:00 a.m. on a Monday morning. **Therefore, this violation is hereby dismissed.**

Citation 2, Item 2 Violation: "Other"

29 C.F.R. 1910.212(a)(5). When the periphery of the blades of a fan is less than seven feet above the floor or working level, the blades should be guarded. The guard shall have openings no larger than 1/2".

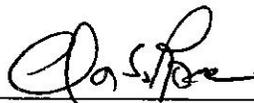
In this matter, it was alleged that the employer did not provide a workplace free from recognized hazards when fans less than seven feet above the floor or working level had exposed unguarded blades.

Per the evidence presented, the Hearing Officer does find that the blades should have been guarded and that they were exposed unnecessarily in this matter. **There was no monetary penalty for this particular violation. The violation itself is hereby affirmed.**

In conclusion, there should be some discussion regarding employer's argument that Officer Newton exceeded the permission given to him regarding the inspection in question. Mr. Wood argued that the scope of the investigation was impermissibly expanded beyond the scope agreed to by him. However, it seems clear by the evidence that Mr. Wood did give Mr. Newton permission to inspect his place of business. Also, it is permissible for Mr. Newton to expand his inspection consistent with his own observations at the site. As stated, supra, in the Findings of Fact, Mr. Newton did credibly testify that he met with Mr. Wood before the inspection and informed him of the fact that he could refuse his inspection. It is clear that Mr. Newton had the permission to walk around the shop, take photographs, and question various employees. Mr.

Wood does concede that he gave Mr. Newton permission to conduct an inspection. Also, the employer agreed that Mr. Newton invited him to accompany him on the inspection and he conceded that he was present for some portions of the inspection. At times he was with Mr. Newton on the inspection; at times he was off doing other projects. Put in another way, he would "come and go" to attend to other matters. However, he remained on the premises throughout the inspection. Mr. Newton acted appropriately and within the authority given to him by the employer.

Dated at Montpelier, Vermont this 6th day of June, 2014.



Alan S. Rome, Esq.
HEARING OFFICER