

**STATE OF VERMONT**

**OCCUPATIONAL SAFETY  
AND HEALTH REVIEW BOARD**

COMMISSIONER OF LABOR,  
Complainant,  
v.  
XYZ CORP.,  
Respondent.

Inspection No:  
Docket number: VRB\_\_\_\_\_

**PETITION FOR DISCRETIONARY REVIEW**

Pursuant to Review Board Rule 91, 29 C.F.R. 2200.91, Respondent, XYZ Corp. petitions the VOSHA Review Board (VRB) for review of the Hearing Officer's decision in this case.

**Statement Of Portions Of The Decision And Order To Which Exception Is Taken**

1. XYZ Corp. takes exception to that portion of the Decision and Order wherein the Hearing Officer held XYZ Corp. in serious violation of the standard published at 29 CFR 1926.28(a) as alleged in Serious Citation 1, Item 1, in finding that XYZ's employee John Jones was exposed to the alleged violation. (Hearing Officer's Decision at pp. 8 - 12.)
2. XYZ Corp. takes exception to that portion of the Decision and Order pertaining to Serious Citation 1, Item 1, wherein the Hearing Officer held that the action of employee John Jones was not unpreventable employee misconduct. (Hearing Officer's Decision at pp. 13 - 17.)

**Statement Of Reasons For Which Exceptions Are Taken**

1. In the Decision, the Hearing Officer failed to follow the test set forth for the Fifth Circuit's Decision in Secretary of Labor v. RPQ Corp. for determining the existence of employee exposure. The testimony at transcript pages 25-45 clearly shows that John Jones was not in the zone of danger because he was on a work break and outside of the definition of the zone.
2. The evidence of record supports XYZ's position that the actions taken by employee John Jones were unpreventable. The OSHA Review Commission has set forth the test for determining unpreventable employee misconduct at Secretary of Labor v. ROM Corp. The testimony of XYZ's employees at transcript pp. 46-59 met all of the requirements of ROM Corp. to prove John Jones's actions were unpreventable.

For the reasons stated herein, XYZ Corp. submits that the VRB should direct review of the Decision and Order of the Hearing Officer.

Respectfully submitted,

By \_\_\_\_\_  
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