



535

IN THE COURT OF APPEALS OF IOWA

SEEDORFF MASONRY, INC.,	)	
Appellee,	)	Filed April 28, 1978
vs.	)	
COMMISSIONER OF LABOR,	)	<u>430</u>
Appellant.	)	2-59869

Appeal from Linn District Court - Robert Osmundson, Judge.

Appeal from the trial court's order setting aside the decision of the Iowa Occupational Safety and Health Review Commission on the ground the findings of the Commission were not supported by substantial evidence. - Reversed.

Richard C. Turner, Attorney General of Iowa, Thomas D. McGrane, Assistant Attorney General, and Eugene J. Kopecky, Linn County Attorney, for Appellant.

Patrick Roby, of Shuttleworth & Ingersoll, Cedar Rapids, for Appellee.

Heard by Allbee, C.J., and Donielson, Snell and Oxberger, JJ. Carter, J. takes no part.

PER CURIAM

Appellant Commissioner of Labor appeals the trial court order setting aside the decision of the Iowa Occupational Safety and Health (IOSH) Review Commission on the ground that the findings of the commission were not supported by substantial evidence based upon the record as a whole.

A citation was issued against the appellee, Seedorff Masonry, Inc., alleging a nonserious violation of the IOSH standards. The company contested the citation and a complaint was filed with the review commission. The hearing board affirmed the citation and Seedorff appealed to the district court. On appeal here, the Commissioner argues there was sufficient evidence to support the review commission's decision that Seedorff Masonry in fact violated the standards.

Our initial inquiry is the scope of our review. Judicial review of a commission order is provided by section 9 of the IOSH Act, § 88.9, The Code. Section 88.9 provides that judicial review may be sought in accordance with the terms of the Iowa Administrative Procedure Act, chapter 17A, The Code. The applicable provisions concerning judicial review are found in § 17A.19 of that chapter. Chapter 17A applies to all agency proceedings unless specifically exempted, except as to proceedings in process on July 1, 1975. Section 17A.23, The Code.

In the instant case, the initial inspection of Seedorff's worksite occurred on June 24, 1974. The citation was issued on July 12, 1974, and contested on August 6, 1974. The complaint was then filed with the review commission on August 26th. A hearing was held on April 16, 1975, and on April 25th, the decision of the commission affirmed the citation. Seedorff's appeal to the district court occurred on June 23, 1975. Since this proceeding was in progress on July 1, 1975, the provisions in chapter 17A are not applicable. Therefore, our review is governed by the provisions of § 88.9(1), The Code (1973). See § 17A.23, The Code.

Section 88.9(1) of the 1973 Code provides: "The findings of the commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive." Our review is limited to a determination of whether there was substantial evidence on the record, when

considered as a whole, to support the findings of the IOOSH review commission that Seedorff Masonry violated Iowa Departmental Rules (I.D.R.) Ch. 26 (Standard 1926.45(d)(10)) (1973).

Standard 1926.45(d)(10) provides that:

Guardrails made of lumber not less than 2 x 4 inches (or other material providing equivalent protection), and approximately 42 inches high, with a midrail of 1 x 6 inch lumber (or other material providing equivalent protection), and toeboards shall be installed at all open sides and ends on all scaffolds more than 10 feet above the ground or floor...

The testimony established that the scaffolding used by Seedorff contained the required toeboards. However, the evidence also showed that it did not contain the necessary guardrails or midrails required by the standard. Instead of the guardrail and midrail, cross braces in the form of an "X" were used. The midpoint of the "X", where the two braces crossed, was 46 inches above the work platform.

The expert for the Commissioner, a field safety technician for the department of labor, testified that the cross bracing was not a guardrail or a midrail under the standard and did not eliminate the hazard of a worker falling through the bracing, which the standard seeks to prevent by its requirements.

Throughout the proceeding the company sought to prove there was no violation because equivalent protection was provided by the cross bracing. However this may be, it has no application. The company misapprehends the meaning of "or other material providing equivalent protection" as used in the standard. The standard is satisfied if a guardrail and a midrail are made of some material other than lumber that provides equivalent protection. The phrase does not embrace cross bracing or other designs, regardless of the protection they may afford.

We have reviewed the record and find there was substantial evidence on the record considered as a whole to support the findings of the commission. The trial court erred.

REVERSED.