FILED
MAY 31 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

FORREST & ASSOCIATE, INC.,

Appellant,

v.

IOWA OCCUPATIONAL SAFETY & HEALTH REVIEW COMMISSION,

Appellee.

Filed May 31, 1978

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2-60722

Appeal from Polk District Court - J. P. Denato, Judge.

Appeal from trial court's decree upholding a decision of the Iowa Occupational Safety and Health Review Commission. Affirmed.

Robert E. Dreher and Mark R. Adams, of Dreher, Wilson, Adams & Jensen, Des Moines, for appellant.

Richard C. Turner, Attorney General, and Thomas D. McGrane, Assistant Attorney General, for appellee.

Submitted to Allbee, C.J., Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Appellant, Forrest & Associates, Inc., appeals from trial court's decree upholding a decision of the Iowa Occupational Safety and Health Review Commission. That commission held appellant had violated standard 1926.451(d)(10) because there were no midrails on the ends of a 30 feet high scaffold and no guardrails or midrails on the open side. The issue, as appellant states it, is whether the commission's findings were supported by substantial evidence when the record is viewed as a whole.

I. Because the petition for judicial review was filed on June 5, 1975, our review is governed by the provisions of § 88.9(1), The Code 1973. Section 17A.23, The Code. That standard appears to be functionally identical to the standard used by trial court, found in § 17A.19(8)(f), The Code. The nature and scope of review under the latter is discussed in Davenport v. Public Employment Relations Bd., 264 N.W.2d 307, 311-13 (Iowa 1978).

II. Appellant contends that standard 1926.451(d)(10), by its own terms, has no application to this case because there was no showing that the ends and side of the scaffold in question were open. The applicable standard provides:

> 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. . . .

A review of the entire record persuades us that trial court was correct in holding the commission's findings were supported by substantial evidence. We approve and adopt trial court's construction of the standard. In addition, we note that the "open" requirement must be read in conjunction with the "equivalent protection" alternative in the standard. The commission properly found that the tubular cross bracing did not provide protection equivalent to that required by the standard. It seems clear that a scaffold section without equivalent protection cannot be anything other than open.

AFFIRMED.