United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1924 Building – Room 2R90, 100 Alabama Street SW
Atlanta, Georgia 30303-3104

Secretary of Labor, Complainant, v. Sanderson Farms, Inc., Respondent.	OSHRC Docket No. **14-0520**

Appearances:

Kristina T. Harrell, Esquire, U.S. Department of Labor, Office of the Solicitor, Atlanta, Georgia
For the Secretary

Darren Harrington, Esquire, Key Harrington Barnes, P.C., Dallas, Texas
For Respondent

Before: Administrative Law Judge Sharon D. Calhoun

DECISION AND ORDER

This proceeding is before the Occupational Safety and Health Review Commission (Commission) pursuant to section 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651-678 (Act). Following an inspection of Sanderson Farm Inc.'s (Sanderson) worksite in Laurel, Mississippi, the Secretary issued a citation to Sanderson alleging two serious and three other than serious violations of the Act. Thereafter, the Secretary withdrew Item 1 of Citation 1 and all items of Citation 2. At issue before the Commission are Items 2a and 2b of Citation 1 alleging serious violations of the Act, and proposing a penalty in the amount $4,050.00.

A hearing in this matter was held on August 8, 2014, in Jackson, Mississippi. The parties filed post-hearing briefs on October 8, 2014.

Jurisdiction

The parties stipulated that at all times relevant to this action Sanderson Farms was an employer engaged in a business affecting interstate commerce within the meaning of sections 3(3) and 3(5) of the Act, 29 U.S.C. §§ 652(3) & (5). S*ee also* Answer ¶¶ 1 & 2. The parties also stipulated that jurisdiction of this action is conferred upon the Occupational Safety and Health

Review Commission pursuant to section 10(c) of the Act. (Tr. 14-15).

Background

Sanderson operates a chicken processing plant in Laurel, Mississippi. It employs approximately 500 employees at the Laurel facility and has approximately 11,000 employees company-wide (Tr. 113, 209). On January 15, 2014, OSHA Compliance Safety and Health Officer Henry Rust (CSHO) conducted a planned programmed inspection of Respondent's Laurel facility.

During the inspection, while at the chicken cut-up area in the facility, the CSHO observed two employees on either side of a metal table using motorized saws to cut chickens in half (Tr. 46-47, 69-70; Exhs. G-1 -G-4). The rotating shafts between the motors and the saw blades were unguarded (Tr. 74, 91; Exhs. G-2, G-2(A), G-7). The shafts were less than 7 feet above the ground (Tr. 81). As a result of this condition, the Secretary issued to Sanderson Citation 1, Item 2a alleging a serious violation of 29 C.F.R. § 1910.219(c)(2)(i) for failing to guard all exposed parts of the horizontal shafts located between the motor and the blade on both saw hand cutters.

The CSHO also observed an unguarded shaft end protruding from a gear box at tender scoring station #1 (also referred to as the "deboning station") (Tr. 75; Exhs. G-10 - G-13). He testified the shaft end was not smooth because a "key" which locks the shaft to the gearbox protruded from the surface of the shaft (Tr. 76; Exhs. G-10 - G-12). Based on the CSHO's observations, the Secretary issued to Sanderson Citation 1, Item 2b, alleging a serious violation of 29 C.F.R. §1910.219(c)(4)(i) on the grounds that it failed to guard the shaft end protruding from a gear box at tender scoring station #1.

The Secretary proposed a combined penalty of $4,050.00 for Items 2a and 2b

The Alleged Violations

Applicable Law

To establish a violation of an OSHA standard, the Secretary must establish that: (1) the standard applies to the facts; (2) the employer failed to comply with the terms of that standard; (3) employees had access to the hazard covered by the standard, and (4) the employer had actual or constructive knowledge of the violation (i.e. the employer knew, or with the exercise of

reasonable diligence could have known, of the violative condition).[1] *Atlantic Battery Co.,* 16 BNA OSHC 2131, 2138 (No. 90-1747, 1994).

Citation 1, Item 2a

Citation 1, Item 2a alleges a violation of 29 C.F.R. §1910.219(c)(2)(i) on the grounds that Sanderson failed to guard all exposed parts of the horizontal shafts attaching the motor to the blade on both saw hand cutters. The cited standard provides:

> All exposed parts of horizontal shafting seven (7) feet or less from floor or working platform, excepting runways used exclusively for oiling, or running adjustments, shall be protected by a stationary casing enclosing shafting completely or by a trough enclosing sides and top or sides and bottom of shafting as location requires.

It is undisputed that the shafts between the saw blades at the chicken cut-up area were less than 7 feet above the floor and unguarded. (Joint Pre-Hearing Statement, Stipulation Nos. 5 and 6). At the chicken cut-up area, a metal chute deposits whole chickens onto a table located between two operators of the saw hand cutters (Tr. 47, 69-70; Exh. G-1). The saw operators continually grab chickens from the table and cut them in half with the saw hand cutter (Tr. 47, 70; Exhs. G-1 - G-4). To cut the chicken, the employee holds the chicken on each side and pushes it into the rotating blade (Tr. 47-48, 70; Exhs. G-1, G-3, G-4). As the chicken is cut, the operator's hands normally come down away from both the blade and the unguarded shaft (Tr. 125).

The shaft is covered by an arbor which is a sleeve that slides over the shaft of the saw motor and connects the shaft to the saw blade (Tr. 61, 67). The arbor is connected to the shaft by two set screws which protrude about a hair's width above the shaft (Tr. 61, 189; Exhs. G-5, G-6). A small gap, estimated at ¼ inch, exists between the arbor and the motor housing (Tr. 182, 190; Exh. G-5(A)).

During installation of the arbor onto the shaft wrenches were used to hold the arbor to attach it to the shaft. As a result, teeth marks or impressions were made in the arbor. This caused

[1] In its Answer, Sanderson raised the affirmative defense of Unpreventable Employee Misconduct to both Items 2a and 2b. However, Sanderson did not adduce any evidence relevant to the defense at the hearing and did not brief the issue. It also was not listed as an unresolved issue in the Joint Pre-Hearing Statement. The briefing Order issued on September 8, 2014, advised the parties that failure to brief an issue would result in it being deemed abandoned. Therefore, the undersigned finds Sanderson abandoned the affirmative defense of employee misconduct.

some rising of the metal along the sides of the impressions (Tr. 62-63). Because it is connected to the shaft, the arbor covering rotates at the same speed as the shaft, approximately 1750 rpm, or about 30 times a second (Tr. 56). The shaft rotates counterclockwise (Tr. 95-96). According to the CSHO, if an employee contacted the shaft the counterclockwise rotation could "pull the hand back away from her and start to twist up" (Tr. 129-130). The CSHO testified he saw an employee's hand come within four inches of the rotating shaft (Tr. 126).

Sanderson asserts the cited standard is not applicable. It contends the standard found at 29 C.F.R. § 1910.219 only applies to a power transmission apparatus. Sanderson contends the Secretary cited the arbor, which was the only exposed rotating part. It argues the arbor and the shaft are two distinct components. The rotating arbor is a sleeve which slides over the motor shaft (the power transmission apparatus) of the cut-up saw motor and is connected to the shaft by two set screws. The purpose of the arbor is to secure the saw blade to the power transmission apparatus. Sanderson argues the arbor itself is not a power transmission apparatus, therefore, the cited standard does not apply (Sanderson's brief, pp. 9-10). Sanderson further argues allowing OSHA to treat distinct non-shaft components as if they were power transmission shafts will lead to confusion regarding the circumstances when an arbor properly will be distinguished from a shaft. According to it, the applicable standard is the general machine guarding standard at 29 C.F.R. § 1910.212 which requires the Secretary to prove the arbor actually presents a hazard that necessitates a machine guard.[2] Sanderson asserts the Secretary failed to establish the arbor presented a hazard here.

The undersigned is not persuaded. As Sanderson notes, the purpose of the arbor is to secure the blade to the power transmission apparatus, i.e. the shaft. Without the arbor, the shaft would not be connected to the saw and, therefore, would have no function. The arbor is a vital and integral part of the power transmission apparatus and must be considered part of it. It rotates at the same speed as the shaft and presents the same hazard as the unguarded shaft. It can be protected in the same manner as an uncovered shaft. The undersigned has considered Sanderson's concern that there are circumstances when an arbor would be distinguishable from the power transmission apparatus. The undersigned will not speculate regarding when an arbor

[2] For example, § 1910.212(a)(1) provides that "[o]ne or more methods of machine guarding shall be provided to protect the operator and other employees in the machine area *from hazards* such as those created by point of operation, ingoing nip points, rotating parts, flying chips and sparks." (emphasis added).

would be sufficiently distinct from the power transmission apparatus not to be considered part of the apparatus. In this specific situation the arbor is integrally related to the power transmission shaft and as to both function and hazard is virtually indistinguishable from it. Accordingly, the cited standard is applicable.

Sanderson next asserts there was no violation because the location of the saw operator in relation to the shaft was such that it was not reasonably predictable the operator would contact the shaft. It points out the saws have been used for 50 years to make approximately 5.2 billion cuts to 750 million chickens. During this time, no employee has been injured by making contact with the arbor and no employee has complained about making inadvertent contact with the shaft (Sanderson's brief, p. 5; Tr. 171).

While the accident history is certainly a factor to be considered when determining an appropriate penalty, neither a specific accident rate nor any accident is required to establish a violation. *Lee Way Motor Freight, Inc. v. Secretary of Labor*, 511 F.2d 864, 866 (10th Cir. 1975); *Signode Corp.,* 4 BNA OSHC 1078 (No. 3527, 1976); *petition for review denied*, 549 F.2d 804 (7th Cir. 1977). The purpose of the Act is to prevent the first accident. *Elliot Constr. Corp.,* 23 BNA OSHC 2110, 2119 (No. 07-1578, 2012).

Sanderson also asserts the manufacturer has produced thousands of these saws and has never been asked to consider designing or installing a guard. There is no evidence to support this assertion. Even if true, there is no evidence regarding the configuration of other worksites; for example, whether other employers installed some form of obstruction to prevent contact with employees.

Sanderson recognizes the standard "presumes" a hazard, but argues this only creates a presumption which frees the Secretary from producing *prima facie* evidence to establish by a preponderance of the evidence that a hazard exists. Sanderson contends it was required only to present sufficient evidence that more likely than not there was no hazard, and that once it presented such evidence, the burden shifted back to the Secretary to establish a hazard. Sanderson asserts it presented sufficient evidence to demonstrate there was no hazard, which the Secretary failed to rebutt.

Sanderson correctly argues there is a substantive distinction between standards such as 29 C.F.R. § 1910.212(a)(1) which apply only when there is a hazard and standards such as 29 C.F.R.

§ 1910.219(c)(2)(i) which "presume" a hazard and explicitly require protective measures whenever certain conditions are met. The Commission has held that to establish a violation of standards such as 29 C.F.R. § 1910.219(c)(2)(i), the Secretary need only show the employer violated the terms of the standard. The Secretary "bears no burden of proving that failure to comply with such a specific standard creates a hazard." *Kaspar Electroplating Corp.,* 16 BNA OSHC 1517, 1523 (No. 90-2866, 1993). Sanderson overreaches by asserting this creates a generally rebuttable presumption. The Commission has consistently held that under such a standard "working in close proximity to unguarded machinery *where access is not otherwise impeded or obstructed* is sufficient to show exposure to a hazard." *Con Agra Flour Milling Co.,* 16 BNA OSHC 1137, 1150 (No. 88-1250, 1993). *rev'd in part on other grounds*, 25 F.3d 653 (8th Cir. 1994) (emphasis added); *See also, American Luggage Works, Inc.* 10 BNA OSHC 1678 (No. 77-893, 1982) (rejecting argument that no machine guarding required because operators required to remove hands from point of operation because the standard requires a "device" and does not allow reliance upon skill or attentiveness of employee).[3] Similarly, in *General Motors Corp, Rochester Products Div.,* 9 BNA OSHC 1575 (No. 78-2894, 1981) the Commission noted it "has consistently held that the cited standard requires physical methods of guarding rather than methods that depend on human behavior."[4]

While the evidence demonstrates the location of the shaft makes contact with employees likely, there is no evidence that access to the shaft was impeded or obstructed. Guarding is intended to eliminate danger from unsafe operating procedures, poor training, or operator inadvertence. By providing guarding, reliance upon the skill or attentiveness of an operator is replaced. *American Luggage Works, Inc.,* 10 BNA OSHC 1678, 1682 (No. 77-893, 1982).

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[3] Insofar as legal presumptions generally are rebuttable, it is inaccurate to state that such standards "presume" a hazard, *See e.g.* Fed. Rules of Evidence 301. Rather, the Secretary has made a regulatory determination that a stated condition is inherently dangerous. Such regulations prohibit exposure to the condition unless the prescribed protective measures are implemented. However, the Secretary still has the burden of establishing employee exposure to the condition. For example, when promulgating 29 C.F.R. § 1910.23(a)(1), which requires that floor holes "shall be guarded by a standard railing," the Secretary, in an exercise of his regulatory authority, determined that unguarded floor openings are *per se* hazardous. Therefore, an employer cannot defend with evidence that if an employee fell through the opening he would land on a bed of feathers. Simply put, if an employee is exposed to floor openings, they must be guarded.

[4] *Compare, Buffets, Inc.,* 21 BNA OSHC 1065 (No. 03-2097, 2005), where the Commission stated that "[u]nder section 1910.212(a)(1), the Secretary is required 'to prove that a hazard within the meaning of the standard exists in the employer's workplace.'" (citation omitted)

Therefore, absent evidence that contact with the shaft was impeded or otherwise obstructed, Sanderson cannot prevail by merely asserting the shaft was guarded by the position of the employee.

The cited standard requires "[a]ll exposed parts of horizontal shafting seven (7) feet or less from floor or working platform. . . shall be protected by a stationary casing enclosing shafting completely[.]" The undisputed evidence establishes the horizontal shafts between the motors and the cutting saws were less than 7 feet above the floor and were unguarded. (Joint Prehearing Statement, Stipulation Nos. 5 and 6). The operators' hands came within 6 to 8 inches of the shafts (Tr. 167, 213, 274-275). This establishes employees were exposed to the unguarded shafts in violation of the cited standard.

There is no dispute Sanderson was aware the shafts were less than 7 feet from the ground and were unguarded. Sanderson's safety and health coordinator Richard Ward testified he worked as a cut-up saw operator for six years and was not aware of an arbor shaft being guarded (Tr. 271). Similarly Sanderson's manager of corporate safety and health Scott Rushing testified guards were not installed because he did not believe employees were exposed to a hazard (Tr. 166). The knowledge of Sanderson's officials is imputed to it. *Jersey Steel Erectors*, 16 BNA OSHC 1162, 1164 (No. 90-1307, 1993), *aff'd*, 19 F.3d 643 (3d Cir. 1994). Therefore, Sanderson had knowledge of the violative condition. The Secretary has established a violation of the cited standard.

The violation was cited as serious. A violation is serious if there is a substantial probability that death or serious physical harm could result from the violative condition. 29 U.S.C. § 666(k). Complainant need not show that there is a substantial probability that an accident will occur; he need only show that if an accident occurred, serious physical harm would result. *Phelps Dodge Corp. v. OSHRC*, 725 F.2d 1237, 1240 (9th Cir. 1984) (*citing California Stevedore & Ballast Co. v. OSHRC*, 517 F.2d 986, 988 n.1 (9th Cir. 1975)).

Here, the shafts were approximately 5 inches long and rotated at approximately 1750 rpm (Tr. 56, 122). Two set screws slightly stuck out from the shafts. There were also teeth marks from the application of a wrench when the screws were turned (Tr. 104). According to the CSHO, these indentations forced some of the metal up which created a catch point (Tr. 62-63, 122). Also, there was a small space between the arbor and the blade. Rushing estimated the gap

to be ¼ inch (Tr. 190). The CSHO estimated the gap was 3/8 inch, which also could create a catch point (Tr. 131). Rushing disputed the CSHO's findings regarding the catch points (Tr. 181). The undersigned finds the evidence does not establish that the gap was large enough for an employee's finger to get caught (Tr. 190). It was large enough, however, to snag clothing.

If an employee's clothing were snagged on the shaft or in the gap between the shaft and the motor, an employee could be seriously injured. The shafts rotate at 1750 rpm and could pull an employee in before the employee could react. The motor was one horsepower (Tr. 57). This is enough to break a bone or amputate a finger (Tr. 57, 101). There is no emergency stop button on the machine. Therefore, if an employee's clothing were snagged on the shaft, he would have to find a way to flip the off switch located behind the machine (Tr. 226). The evidence establishes the violation was serious.

While serious, the evidence demonstrates the probability of an incident and therefore its gravity is low. When operated normally, employees have no reason to contact the shaft. Although the purpose of the Act is to prevent the first accident, that there is no history of any incident demonstrates that the gravity was low. Additionally, the operators wore four layers of gloves (including Kevlar gloves) covered by wire mesh gloves when operating the saws (Tr. 175). These protective gloves substantially reduced the risk of injury in case of hand contact with the shafts. Rushing demonstrated the protection provided by the gloves by holding them directly against the operating saw blade (Exhs. R-6 & R-7). Rushing testified he put considerable pressure on the gloves, yet it took several seconds before the saw cut through them (Tr. 184-185).

Although the gloves protect the operators' hands from cuts or bruises from the shaft or the gap, they do not protect the operators from the hazard of getting an article of clothing snagged. In this regard, the operators wore aprons which were designed to break away (Tr. 120-121). The CSHO theorized this exacerbated the hazard because as the apron tore it exposed the clothing below allowing it access to the shaft and the hazard of getting snagged (Tr. 121). This may be a theoretical possibility, but the likelihood of such an incident seems at best remote. Indeed, the Secretary produced no evidence to support the CSHO's speculative theory. The CSHO also observed an operator wearing what appeared to him to be a scarf to keep warm (Tr. 72; Exh. G-8). The CSHO was concerned that if the scarf snagged on the shaft, it could result in

a broken neck (Tr. 92). However, saw operator Mary Moffett explained the object was not a scarf, but brown paper towels. She did not know the reason why the employee was wearing the paper towels but surmised it was to protect the employee from blood splatter from the chickens (Tr. 281). While the work rules do not specifically prohibit employees from wearing scarves, they are prohibited from wearing loose clothing (Tr. 227).

The Secretary also posits an employee may slip or be pushed into the unguarded shaft. The operators' feet are stationary during the cutting operation (Tr. 128, 172). The cutting operation produces some blood, liquid and debris which could create a slipping hazard (Tr. 95, 99, 223). To reduce slipping however, Sanderson used Tuff Coat, a slip resistant concrete. A mat was placed on top of the concrete which the CSHO testified reduced but did not eliminate the risk of slipping (Tr. 128). The operators wear slip-resistant work shoes or athletic shoes (Tr. 172). Sanderson also erected a handrail made with large silver pipes as a barrier to prevent inadvertent contact between the operator and other people (Tr. 173; Exhs. G-1, G-8). An accident could result in serious injury, but the likelihood of an accident is very low. Therefore, the undersigned finds the violation to be of low gravity.

Citation 1, Item 2b

Citation 1, Item 2b, alleges a violation of 29 C.F.R. §1910.219(c)(4)(i) on the grounds that a shaft end protruding from a gear box at the tender scoring station #1 was not smooth, causing an employee's apron to be torn several times a week. The standard provides that

> [p]rojecting shaft ends shall present a smooth edge and end and shall not project more than one-half the diameter of the shaft unless guarded by nonrotating caps or safety sleeves.

In the deboning area, the CSHO observed an unguarded shaft end protruding from a gear box at the tender scoring station #1 (Tr. 75; Exhs. G-10 - G-13). The CSHO estimated the shaft rotated slowly at about 14-16 rpm (Tr. 78). Safety manager Rushing estimated the rotation at 40 rpm (Tr. 199). The shaft was approximately 2.5 feet above the ground (Tr. 81). Employees work on a raised platform approximately 8 inches off the floor (Tr. 81; Exh. G-13). An employee interviewed by the CSHO told him that when she steps on the platform she has to lean towards the side nearest the unguarded rotating shaft end (Tr. 79). The CSHO observed the employee either leaning or sitting on the drip tray next to the unguarded shaft end (Tr. 79, 81-82; Exhs. G-

13, G-15). The work area was small and there was no barrier between the employee and the shaft end while working (Tr. 79; Exh. G-13).

According to the CSHO, the shaft end was not smooth because there was a "key" on top of the shaft which locks the shaft to the gearbox (Tr. 105; Exhs. G-11, G-12). He estimated the key protruded approximately 3/8 inch from the surface of the shaft (Tr. 77). Safety manager Rushing disagreed and estimated the protrusion was just a bump and no thicker than a piece of paper or a hair and testified the key had been ground down and was covered by rust (Tr. 194).

The Secretary argues the standard applies because it only exempts shafts with a smooth edge and end. He asserts the key on the end projected from the shaft therefore the shaft was not smooth. Sanderson asserts the shaft was smooth, as the key was ground down to a hairsbreath and did not present a catch hazard to employees (Tr. 195).

When interpreting regulations words should be given their plain meaning. *Usury v. Kennecott Copper Corp.,* 577 F.2d 1113, 1118 (10th Cir. 1977); *Bunge Corp.,* 12 BNA OSHC 1785, 1791 (No. 77-1622). According to the Merriam-Webster Dictionary smooth means "having a continuous even surface." Whether the projection was 3/16 or 3/8 of an inch, the shaft was not "smooth."

Sanderson's assertion that the standard is not applicable because there was no hazard fails. As with Item 2a, the standard here presumes a hazard when a shaft end or edge is not smooth. The shaft was not smooth and was required to be guarded. It was not. The evidence establishes employees were exposed to contact with the shaft end. They were working in proximity to the shaft end. There was no barrier between the employee and the shaft end. Violation of the standard is established.

The evidence establishes Sanderson knew the shaft end had a protruding key, that it was unguarded, and that employees worked in proximity to the shaft end. Ward testified that as part of his job he oversees safety inspections at the Laurel facility and conducts weekly audits to ensure the facility is OSHA compliant (Tr. 271-272). Therefore, Ward knew or with the exercise of reasonable diligence could have known of the unguarded shaft end. *Pride Well Service,* 15 BNA OSHC, 1809,1814 (No 87-692, 1992). Ward's knowledge is imputed to Sanderson. *Jersey Steel Erectors*, 16 BNA OSHC at 1164. Knowledge of the violation is established. The Secretary has made a prima facie case of the violation cited in Item 2b.

The Secretary cited the violation as serious. The CSHO testified that if a scarf, jacket, or smock became tangled by the key the material would start turning and twisting and would likely result in a broken bone (Tr. 105-106). He opined that if the operator's clothing was snagged it could pull the operator backwards causing the employee to fall from the raised platform, potentially resulting in a concussion or broken bones (Tr. 109).

The undersigned finds that if an employee's clothing were to become snagged the slow rotation of the shaft and its proximity to the employee would give the employee time to react and free the snagged garment. The small protrusion together with the short length of the shaft makes it unlikely any garment could get sufficiently tangled to pull an employee off his or her feet. Safety manager Rushing tested a shaft similar to the one cited by the Secretary, except the key in the tested shaft protruded substantially more than the one on the cited shaft (Tr. 198-199). In the test, Rushing took a smock and attempted to snag it on the shaft. Despite placing considerable pressure on the smock and moving it around to various locations on the shaft it would not snag (Tr. 199; Exh. R-10). As a protective measure, the smock was designed to breakaway if snagged (Tr. 120). A preponderance of the evidence shows that if an employee contacted the shaft the small raised area would cause nothing more serious than a cut or a bruise. Therefore, the violation is an other than serious violation rather than a serious violation as alleged by the Secretary.

In reaching this conclusion, the undersigned finds the gravity of the violation was lower than determined by the Secretary in calculating the penalty. The citation was partially predicated on the erroneous assumption that smocks were torn on the shaft (*compare* citation with Tr. 110-112). However, the evidence fails to establish smocks had been caught on the shaft (Tr. 110-112, 201). The CSHO was told the operator tore four to five aprons a week. He assumed they were torn on the rotating shaft (Tr. 110). The evidence reveals the smocks were torn on the drip pan (Tr. 209). The CSHO admitted he might have misunderstood why the smocks tore and testified that in his view the probability of an accident was lower than what he determined when the proposed penalty was calculated (Tr. 111-112). Therefore, the undersigned finds a lower gravity is appropriate for this violation.

Penalty

Section 17(j) of the Act, 29 U.S.C. § 666(j), requires that in assessing penalties, the Commission give "due consideration" to four criteria: the size of the employer's business, the gravity of the violation, the employer's good faith, and its prior history of violations. *Specialists of the South*, *Inc.*, 14 BNA OSHC 1910, 1910 (No. 89-2241, 1990). These factors are not necessarily accorded equal weight; generally speaking, the gravity of a violation is the primary element in the penalty assessment. *J. A. Jones Construction Company*, 15 BNA OSHC 2201, 2214 (No. 87-2059, 1993) (*citing Trinity Indus., Inc.*, 15 BNA OSHC 1481, 1483 (No. 88-2691, 1992); *Astra Pharmaceutical Prods., Inc.*, 10 BNA OSHC 2070 (No. 78-6247, 1982)).

Sanderson is a large corporation. It employs 500 people at the Laurel facility and has approximately 11,000 employees worldwide. Therefore, no reduction for size was provided (Tr. 113). The CSHO testified that when calculating the penalty he gave Sanderson a 25% reduction because the company had a good written safety program and exhibited good faith toward safety. He also reduced the proposed penalty because the company had no high gravity, willful or repeated violations over the past five years (Tr. 114-115). Therefore, the Secretary proposed a combined penalty of $4,050.00 for both Items 2a and 2b.

When proposing the penalty, the Secretary assumed that both items were serious and that Item 2a was of higher gravity. The Secretary considered Item 2a to be of high gravity due to severity of potential injury, even though he found there to be a “lesser” probability of an accident (Tr. 101). The CSHO admitted he overestimated the gravity of Item 2b because he erroneously assumed the smocks were torn on the shaft end (Tr. 111). He also admitted he overestimated the probability of an accident. On reconsideration, the CSHO testified the violation should have been considered to be of “lesser” probability (Tr. 111). The undersigned agrees.

A preponderance of the record evidence establishes Item 2a is serious but of low gravity, and Item 2b is other than serious and of low gravity. A substantial reduction in the penalty, therefore, is appropriate. Considering the evidence and the statutory factors, a total penalty of $1,500.00 is appropriate for items 2a and 2b.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The foregoing decision constitutes the findings of fact and conclusions of law in accordance with Federal Rule of Civil Procedure 52(a).

ORDER

Based on the foregoing decision, it is ORDERED that:

1. Item 2a of Citation 1, alleging a serious violation of 29 C.F.R. § 1910.219 (c)(2)(i) is affirmed;
2. Item 2b of Citation 1, alleging a serious violation of 29 C.F.R. § 1910.219(c)(4)(i) is affirmed as other than serious; and
3. A combined penalty in the amount of $1,500.00 is assessed.

SO ORDERED.

/s/ Sharon D. Calhoun
SHARON D. CALHOUN
Judge

Date: December 29, 2014