

1 NEVADA OCCUPATIONAL SAFETY AND HEALTH

2 REVIEW BOARD

3 CHIEF ADMINISTRATIVE OFFICER  
4 OF THE OCCUPATIONAL SAFETY AND  
5 HEALTH ADMINISTRATION, DIVISION  
6 OF INDUSTRIAL RELATIONS OF THE  
7 DEPARTMENT OF BUSINESS AND  
8 INDUSTRY,

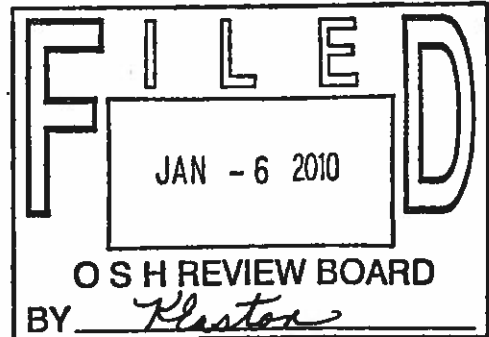
Docket No. RNO 10-1384

9 Complainant,

10 vs.

11 KODIAK ROOFING AND WATERPROOFING CO.,

12 Respondent.



13 **DECISION**

14 This matter having come before the **NEVADA OCCUPATIONAL SAFETY AND**  
15 **HEALTH REVIEW BOARD** at a hearing commenced on the 9<sup>th</sup> day of December,  
16 2009, in furtherance of notice duly provided according to law, MR. ROB  
17 KIRKMAN, ESQ., appearing on behalf of the Complainant, **Chief**  
18 **Administrative Officer of the Occupational Safety and Health**  
19 **Administration, Division of Industrial Relations (OSHA)**; and MR. DAVID  
20 FORD, Vice President of Operations on behalf of Respondent, **Kodiak**  
21 **Roofing and Waterproofing Co.**; the **NEVADA OCCUPATIONAL SAFETY AND HEALTH**  
22 **REVIEW BOARD** finds as follows:

23 Jurisdiction in this matter has been conferred in accordance with  
24 Nevada Revised Statute 618.315.

25 The complaint filed by the OSHA sets forth allegations of  
26 violations of Nevada Revised Statutes as referenced in Exhibit "A",  
27 attached thereto. Prior to commencement of the hearing, counsel  
28 stipulated to the admission of documents and evidence, including  
photographs which were identified as Complainant's Exhibit 1 and 2.

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1 Respondent counsel reserved the right to object to any particular  
2 exhibits during the course of the hearing.

3 In Citation 1, Item 1a, referencing 29 CFR 1926.502(d)(8) the  
4 employer was charged with failure to ensure a horizontal lifeline was  
5 designed, installed and utilized under the supervision of a qualified  
6 person as part of the complete personal fall arrest system. The alleged  
7 violation was classified as "Serious" and a penalty proposed in the  
8 amount of Two Thousand Dollars (\$2,000.00).

9 In Citation 1, Item 1b, referencing 29 CFR 1926.503(a)(1) the  
10 employer was charged with failing to ensure that a training program was  
11 provided to each employee who may be exposed to fall hazards. The  
12 alleged violation was classified as "Serious." The penalty was grouped  
13 with Citation 1, Item 1a.

14 Counsel for the complainant, through Safety and Health  
15 Representative (SHR) Alberto Garcia presented evidence and testimony as  
16 to the violations and penalties.

17 Mr. Garcia testified that on or about May 14, 2009 he conducted a  
18 programmed/planned inspection of the Legends construction site located  
19 in Sparks, Nevada. He was accompanied during the inspection by Safety  
20 and Health Representative (SHR) Jeff Morrow. Mr. Garcia initially  
21 observed employees whom he later identified as those of respondent,  
22 working from roofing canopies near a roof structure at approximately 13  
23 feet from the ground to the edge of the working surface. The SHR  
24 testified he used a tape to measure the distance above the ground and  
25 also compared same to a nearby ladder with known measurements. He  
26 testified that Nevada Revised Statutes (NRS) adopted the Code of Federal  
27 Regulations (CFR) at 1926.502(d)(8) which require specified fall  
28 protection systems for employees working over six feet in height from

1 the ground level while tied off to a horizontal safety line. He  
2 concluded the safety line system did not meet the criteria contained in  
3 the standard. Mr. Garcia testified as to photographic evidence  
4 contained at Exhibit 2, which depicted the horizontal line safety  
5 system. He identified specific safety deficiencies from the photos  
6 which included the saddle portion securing the safety line to the  
7 horizontal line as being installed backwards which could result in a  
8 failure. He further identified through the photographs a lack of any  
9 protecting sleeve and non-existence of rope thimbles. In noting the  
10 deficiencies the SHR requested information from respondent's employee  
11 Mr. Hunter who identified himself as the "qualified person" under whose  
12 supervision the horizontal safety line had been installed and utilized.  
13 Mr. Garcia referenced the provisions of 29 CFR 1926.502(d)(8) which  
14 provides:

15 "Horizontal lifelines shall be designated,  
16 installed, and used, under the supervision of a  
17 **qualified person**, as part of a complete personal  
fall arrest system, which maintains a safety factor  
of at least two." (Emphasis added)

18 SHR Garcia requested Mr. Hunter to provide any data at the site which  
19 could confirm the established capacity of the line to identify the  
20 maximum weights which could be withstood. Mr. Hunter was unable to  
21 furnish any information in that regard. He then asked Mr. Hunter to  
22 inspect the line himself and determine if any deficiencies exist. After  
23 so doing Mr. Hunter informed SHR Garcia that he found the line to be  
24 properly installed, notwithstanding the photographic evidence previous  
25 subject of testimony by Mr. Garcia. Mr. Garcia explained to Mr. Hunter  
26 the definition of **qualified person** under the standard and asked if he  
27 (Hunter) was so qualified. Mr. Garcia testified that Mr. Hunter told  
28 him he did not believe he was a qualified person within the referenced

1 definition. Mr. Garcia then inquired as to whether a general contractor  
2 or any other person at the site or any documentation could be produced  
3 to establish that anyone was satisfying the "qualified person" criteria  
4 involved in the lifeline design or erection. Mr. Hunter testified there  
5 were none.

6 On further inquiry of Mr. Hunter, SHR Garcia testified that Mr.  
7 Hunter could not verbalize or produce information or documents to  
8 demonstrate sufficient training to be a qualified person but said that  
9 he could go to his archives and provide some information; however no  
10 information was forthcoming.

11 A "qualified person" is defined in 29 CFR 1926.32(m) as:

12 ". . . one who, by possession of a recognized  
13 degree, certificate, or professional standing, or  
14 who by extensive knowledge, training, and  
15 experience, has successfully demonstrated his  
ability to solve or resolve problems relating to  
the subject matter, the work or the project."

16 SHR Garcia continued his investigation and spoke to other employees  
17 of respondent with regard to the system. He inquired as to whether any  
18 of them had "qualified person" status and testified all responded in the  
19 negative. He further testified that the employees interviewed informed  
20 him they had not used a torque wrench to adjust the line, did not know  
21 the capacity of the line, and could not explain the importance of  
22 torque. He further inquired of them regarding the turnbuckle and the  
23 u-bolts to secure the line. Again the employees demonstrated a lack of  
24 knowledge or understanding of the safety systems.

25 During continued investigation by SHR Garcia, the three respondent  
26 employees who were observed performing roofing operations from two  
27 adjacent canopies stated they had received training on Section 1730 of  
28 subchapter 4 of the CAL OSHA regulations. However the employees

1 demonstrated no training knowledge as to hazard safety line installation  
2 or use; nor was there any evidence they had received fall hazard  
3 training under the Code of Federal Regulations (CFR) as adopted by the  
4 State of Nevada. He testified that CAL OSHA permits employees to work  
5 up to **twenty (20) feet** above ground without protection. However Nevada,  
6 having adopted the Federal system under the Code of Federal Regulations,  
7 requires employee protection for any work over **six (6) feet** from ground  
8 level. Neither Mr. Hunter nor any other representative of respondent  
9 could provide evidence of full hazard training as required under Nevada  
10 regulations. SHR Garcia determined there to be a violation of 29 CFR  
11 1926.503(a)(1) which requires the employer to ensure a training program  
12 is provided to each employee who might be exposed to fall hazards.

13 SHR Garcia testified as the serious nature of the violation cited  
14 at item 1b due to the potential for serious injury or death from a fall  
15 of approximately 13 feet above ground. He further testified that he  
16 reviewed his operations manual and assessed a penalty after giving due  
17 consideration to the criteria which resulted in a proposed penalty for  
18 item 1b grouped with Item 1a in the sum of \$2,000.00.

19 On cross-examination, SHR Garcia answered questions regarding the  
20 typical hazards which could result from an improper horizontal safety  
21 line installation. Mr. Ford referenced Subpart M under the fall  
22 protection standards and the requirements that lifelines be protected  
23 against being cut or abraded. He inquired of Mr. Garcia of the  
24 potential for same. Mr. Garcia answered that in his opinion the  
25 turnbuckle edge could cut or abrade the line. He testified he observed  
26 sharp edges on the turnbuckles from his ladder through the camera  
27 utilized in obtaining photographic evidence. On further cross-  
28 examination as to alternate methods of protection, Mr. Garcia responded

1 that a "safety monitoring system" could be utilized in place of a  
2 lifeline system if so elected by a respondent employer. Mr. Garcia  
3 further responded however that he was neither informed nor did he  
4 observe the existence of any safety monitoring system as an alternate  
5 means of compliance.

6 On continued direct examination, SHR Garcia testified Mr. Hunter  
7 could not demonstrate knowledge of turnbuckles, torque, or weight  
8 capacity levels and that, together with the photos of the installed  
9 lifeline, confirmed that Mr. Hunter was not in fact a qualified person  
10 under the OSHA definition.

11 On re-direct examination, Mr. Garcia testified that Mr. Hunter  
12 admitted he was not a qualified person for lifeline installation. He  
13 further testified that from the responses of Mr. Hunter and the  
14 interviewed employees he observed and photographed exposed to the  
15 potential hazard, it was clear there was no design, installation, or  
16 supervision of the system by any qualified person as required by the  
17 standard. Mr. Garcia testified he elected not to cite for the lifeline  
18 defects but rather the deficient installation without a qualified person  
19 and lack of training.

20 Complainant witness SHR Jeff Morrow, confirmed the testimony of Mr.  
21 Garcia on lack of employee training knowledge and also testified that  
22 the three employees of respondent advised him (Morrow) that they were  
23 not sure on the required method for u-bolt installation on the safety  
24 line.

25 Complainant witness Mr. Jess Langford identified himself as an  
26 employee of the safety consultation section (SCATS) of the Department  
27 of Industrial Relations. He testified he is a trainer in the safety  
28 section which is completely separate from the enforcement arm of DIR.

1 He testified that although he is a trainer and holds what is known as  
2 an "OSHA 500" certificate, he does not consider himself a "qualified  
3 person" as defined under occupational safety and health law. He  
4 testified the definition of a **qualified person** means certification,  
5 extensive knowledge, degrees or experience in the field to be qualified  
6 under certain construction applications. He testified that as an  
7 instructor of safety courses, and a holder of an OSHA 500 certificate,  
8 he does not consider himself "qualified" under the OSHA definition for  
9 certain specific construction related applications. On direct  
10 examination, Mr. Langford responded that being a holder of an OSHA 500  
11 certificate only reflects that a person is a qualified trainer, but not  
12 that he is a "qualified person" under the OSHA standard definition for  
13 any particular construction application.

14 At the conclusion of complainant's case, respondent representative  
15 Ford presented evidence and testimony. Witness David Nash testified as  
16 the safety director of respondent. He identified Exhibit A, an OSHA 500  
17 certificate, which had been issued to Mr. Hunter. Mr. Nash testified  
18 that he recently accepted the safety director position with respondent  
19 in place of Mr. Hunter, who is no longer employed by the company. He  
20 testified that he is a California safety representative but has now  
21 assumed the Nevada position.

22 On cross-examination of respondent witness Nash, he admitted that  
23 the safety documents provided to complainant demonstrated only that  
24 employees were trained under CAL OSHA but not the Federal/Nevada system.  
25 He admitted there are differences under California and Nevada OSHA  
26 requirements, although not certain of the extent of same. He testified  
27 that he has no evidence to offer to support or confirm respondent  
28 employee training under Nevada law.

1 On closing argument counsel for the complainant argued that at  
2 Citation 1, Item 1a, there was no evidence or testimony that a  
3 "qualified" person, as defined in the Code of Federal Regulations,  
4 designed, installed or supervised the use of the horizontal safety line  
5 subject of the violation. He argued that SHR Garcia's unrefuted  
6 testimony established the facts of violation and noncompliance with the  
7 standard. He further argued that the photographic evidence depicted the  
8 deficiencies in the safety line to corroborate the SHR testimony.  
9 Counsel asserted the evidence showed the horizontal line conditions were  
10 inconsistent with same having been designed or installed under the  
11 supervision of a qualified person. He argued it was unrefuted that Mr.  
12 Hunter told SHR Garcia that he was not a qualified person despite his  
13 earlier identification of himself as the person so designated.

14 Counsel additionally argued that the OSHA 500 certificate alone was  
15 not competent evidence to establish "qualified person" status under CFR  
16 1926.32(m), as it merely qualifies a holder to teach classes on general  
17 construction safety. He noted particularly that Mr. Hunter, in the  
18 unrefuted testimony of Mr. Garcia, admitted he had no knowledge of the  
19 line weight capacity nor the torque requirement on the turnbuckle. No  
20 testimony or evidence was produced to show the horizontal line had been  
21 properly installed under the supervision of a qualified person nor was  
22 there any documentation to establish weight capacity or torque on the  
23 turnbuckle. Exposure was established by the SHR testimony and  
24 photographs in evidence. The serious classification and the proposed  
25 penalty were not subject of any challenge or sworn testimony admitted  
26 as evidence.

27 Counsel further argued at Citation 1, Item 1(b) that no documents  
28 were produced by respondent to demonstrate training occurred under the



1 Nevada/Federal system, but only that some training had occurred under  
2 CAL OSHA. He noted California law is different, less stringent, and  
3 permits employees to work without fall arrest safety systems at a height  
4 of twenty (20) feet above ground as opposed to the six (6) foot limit  
5 under Nevada OSHA. Counsel concluded by arguing that the complainant  
6 had fully met its burden of proof and there was no evidence to rebut or  
7 refute same.

8 Respondent presented closing argument. Mr. Ford represented that  
9 he had no evidence to confirm or deny the testimony of SHR Garcia. He  
10 argued that Mr. Hunter did hold an OSHA 500 certificate, and asserted  
11 he had experience in the field and therefore respondent did satisfy the  
12 standard by having a "qualified person" on site. He further argued that  
13 the employees were trained under Federal OSHA as well as CAL OSHA. Mr.  
14 Ford argued that while CFR 1926.501(b)(ii)(10) permits protection  
15 through a safety monitor as an **alternate means of compliance**, respondent  
16 elected use of a safety line which was correctly installed except for  
17 a few small points. Counsel referenced an OSHA administrative decision  
18 which affirmed violation of a standard but reduced the classification  
19 from serious to *de minimis* because employees were protected  
20 sufficiently, although not to the full extent of the standard.

21 In all proceedings commenced by the filing of a  
22 notice of contest, the burden of proof rests with  
the Administrator. N.A.C. 618.788(1).

23 All facts forming the basis of a complaint must be  
24 proved by a preponderance of the evidence. Armor  
Elevator Co., 1 OSHC 1409, 1973-1974 OSHD ¶16,958  
25 (1973).

26 To prove a violation of a standard, the Secretary  
27 must establish (1) the applicability of the  
28 standard, (2) the existence of noncomplying  
conditions, (3) employee exposure or access, and  
(4) that the employer knew or with the exercise of  
reasonable diligence could have known of the

1 violative condition. See Belger Cartage Service,  
2 Inc., 79 OSAHRC 16/B4, 7 BNA OSHC 1233, 1235, 1979  
3 CCH OSHD ¶23,400, p.28,373 (No. 76-1948, 1979);  
4 Harvey Workover, Inc., 79 OSAHRC 72/D5, 7 BNA OSHC  
5 1687, 1688-90, 1979 CCH OSHD 23,830, pp. 28,908-10  
6 (No. 76-1408, 1979); American Wrecking Corp. v.  
7 Secretary of Labor, 351 F.3d 1254, 1261 (D.C. Cir.  
8 2003).

9 A respondent may rebut the evidence by showing:

- 10 1. That the standard was inapplicable to the  
11 situation at issue;
- 12 2. That the situation was in compliance; or lack  
13 of access to a hazard. See, Anning-Johnson  
14 Co., 4 OSHC 1193, 1975-1976 OSHD ¶ 20,690  
15 (1976).

16 A "serious" violation is established in accordance with NRS  
17 618.625(2) which provides in pertinent part:

18 . . . a serious violation exists in a place of  
19 employment if there is a substantial probability  
20 that death or serious physical harm could result  
21 from a condition which exists or from one or more  
22 practices, means, methods, operations or processes  
23 which have been adopted or are in use at that place  
24 of employment **unless the employer did not and could  
25 not, with the exercise of reasonable diligence,  
26 know the presence of the violation.** (emphasis  
27 added)

28 The defense of employee misconduct requires:

- 29 (1) The employer must **establish work rules** designated to  
30 prevent the violation
- 31 (2) The employer must have **adequately communicated** these  
32 rules to its employees
- 33 (3) The **employer has taken steps to discover violations**
- 34 (4) The employer has **effectively enforced** the rules when  
35 violations have been discovered.

36 Evidence that the employer effectively communicated  
37 and enforced safety policies to protect against the  
38 hazard permits an inference that the employer  
justifiably relied on its employees to comply with  
the applicable safety rules and that violations of  
these safety policies were not foreseeable or  
preventable. Austin Bldg. Co. v. Occupational  
Safety & Health Review Comm., 647 F.2d 1063, 1068

1 (10<sup>th</sup> Cir. 1981).

2 When an employer proves that it has effectively  
3 communicated and enforced its safety policies,  
4 serious citations are dismissed. See Secretary of  
5 Labor v. Consolidated Edison Co., 13 O.S.H. Cas.  
6 (BNA) 2107 (OSHRC Jan. 11, 1989); Secretary of  
7 Labor v. General Crane Inc., 13 O.S.H. Cas. (BNA)  
8 1608 (OSHRC Jan. 19, 1988); Secretary of Labor v.  
9 Greer Architectural Prods. Inc., 14 O.S.H. Cas.  
10 (BNA) 1200 (OSHRC July 3, 1989).

11 The recognized defense of **alternate means of compliance**, requires  
12 a respondent to rebut the evidence and meet its burden of proof. A  
13 cited employer, when found to be in non-compliance with specific  
14 standard criteria, can defend by proving it effectuated an "alternate  
15 means of compliance."

16 See Altor, Inc., et al., 2001 OSHD ¶ 32,526, at p.  
17 50,541 involving a serious violation of 29 CFR  
18 1926.501(c)(1). The respondent employer in Altor  
19 assigned an employee to go down to ground level and  
20 monitor the area where overhead concrete form  
21 stripping was taking place. The assigned employee  
22 was to watch for employees in the area and warn  
23 them away from the areas where there was a danger  
24 of falling debris. No barricades were erected to  
25 prevent employee access to the areas and there was  
26 no protection afforded by a canopy as required by  
27 the standard. In Altor, the use of a monitor to  
28 warn off employees was not found to constitute a  
sufficient alternate means of compliance to satisfy  
the requirements of the standard.

Here, there was no evidence of any alternate means of compliance  
in place to support the recognized elements of the affirmative defense.

The board finds a violation at Citation 1, Item 1(a).  
Complainant's burden to prove the violation was met by the unrefuted  
sworn testimony of SHR Garcia, SHR Morrow and the photographic evidence  
at Exhibit 2. Employees of respondent were observed and photographed  
working while utilizing "tie-off" to a horizontal lifeline system. The  
photographs corroborated the testimonial evidence that the lifeline was  
installed with deficiencies which could result in a failure of the line.

1 The un rebutted testimony of Mr. Garcia was that Mr. Hunter admitted he  
2 was not a "qualified person" as defined in the standard. See 29 CFR  
3 1926.32(m).

4 Mr. Hunter initially identified himself as the supervisor of  
5 respondent responsible for the safety line installation and a **qualified**  
6 **person**. ". . . (A) supervisor's knowledge of deviations from standards  
7 . . . is properly imputed to the respondent employer. . ." See  
8 *Division of Occupational Safety and Health vs. Pabco Gypsum*, 105 Nev.  
9 371, 775 P.2d 701 (1989). The testimony of SHR Garcia and the  
10 photographic evidence, established the applicability of the standard,  
11 existence of noncomplying conditions, employee exposure to recognized  
12 fall hazards, and employer knowledge (constructive). Employer knowledge,  
13 foreseeability, and lack of safety enforcement by supervisory personnel  
14 prevents reliance upon the defense of unpreventable employee misconduct  
15 to relieve respondent of liability.

16 The SHR testimonial evidence of the conduct and responses of  
17 interviewed employees, and the presence of supervisor/representative  
18 Hunter, demonstrate a lack of adequately communicated and/or effectively  
19 enforced safety rules for fall hazards. The record does not contain  
20 competent evidence to excuse the employer from violation after  
21 satisfaction of the burden of proof of violation by the complainant and  
22 a shift of the burden to respondent to prove the defense of  
23 unpreventable employee misconduct or *alternate means of compliance*. See  
24 *Jensen Construction Co.*, 7 OSHC 1477, 1979 OSHD ¶23,664 (1979). Accord,  
25 *Marson Corp.*, 10 OSHC 2128, 1980 OSHC 1045 ¶24,174 (1980).

26 While respondent representative Ford argued in his closing argument  
27 that a safety monitoring system was in place, there was no evidence  
28 presented or admitted in the record to demonstrate the actual existence

1 of any safety monitoring system and therefore an alternate means of  
2 compliance with the cited standard.

3 The testimony of respondent witness Nash provided no evidence that  
4 employees were trained under Nevada OSHA nor was there any other  
5 evidence to establish same. The unrefuted testimony of Mr. Garcia was  
6 that the employees exposed and interviewed at the job site demonstrated  
7 either no answers to safety line questions or answers inconsistent with  
8 their having been trained on installation or use of horizontal safety  
9 lines. Mr. Hunter and the interviewed employees' lack of understanding  
10 as to weight capacity, torque or u-bolt connections, are evidence of a  
11 lack of training. Mr. Hunter did not appear or testify at the hearing.  
12 No representative of respondent could testify that Mr. Hunter was a  
13 "qualified person" as defined in 29 CFR 1926.32(m). Mr. Hunter admitted  
14 to SHR Garcia that he did not believe himself to be a "qualified person"  
15 as defined by the standards, although he initially identified himself  
16 as such. An OSHA 500 certificate standing alone is not evidence that  
17 the holder is a "qualified person" as defined in 29 CFR 1926.32(m).

18 At Citation 1, Item 1a, the board finds a violation of the cited  
19 standard. The presence of a supervisory employee imputed knowledge of  
20 the employee violative conduct to the employer. See *A. J. McNulty &*  
21 *Co., Inc.*, 4 OSHC 1097, 1975-1976 OSHD ¶ 20,600 (1976); and *Division of*  
22 *Occupational Safety and Health vs. Pabco Gypsum, supra.*

23 At Citation 1, Item 1b, the board finds a violation of the cited  
24 standard. The evidence and testimony met complainant's burden of proof  
25 to establish there was no training of respondent employees as required  
26 by Nevada and Federal OSHA. The SHR testimony proved that the conduct  
27 of employee Hunter as well as the other employees interviewed who were  
28 exposed to the hazard, reflected actions inconsistent with those who had

1 been trained. There was no evidence or testimony whatsoever as to any  
2 alternate means of compliance. There was no evidence or testimony as  
3 to employee misconduct of Mr. Hunter or the interviewed employees.

4 The board concludes there was sufficient proof by a preponderance  
5 of evidence to find violations of the cited standards at Citation 1,  
6 Item 1a and Citation 1, Item 1b. The defense of unpreventable employee  
7 misconduct is not available based upon constructive employer knowledge  
8 and foreseeability of the violative conditions. No competent evidence  
9 of an alternate means of compliance was offered or admitted in the  
10 record. The classification of the violation as Serious was established  
11 by the sworn testimony of SHR Garcia and unrebutted by the respondent  
12 witnesses or evidence. The proposed grouped penalty of \$2,000.00 is  
13 reasonable. The Board confirms classification of the violation as  
14 Serious and the proposed penalty of \$2,000.00.

15 The board further concludes there was sufficient proof by a  
16 preponderance of evidence to find a violation of the cited standard at  
17 Citation 1, Item 1b. The facts, testimony and evidence were unrebutted  
18 and established a lack of training under applicable Nevada and Federal  
19 law as required by the standard. The classification of Serious and the  
20 penalty grouped with Citation 1, Item 1a are confirmed.

21 Based upon the above and foregoing, it is the decision of the  
22 **NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD** that violations of  
23 Nevada Revised Statute did occur as to Citation 1, Item 1a,  
24 1926.502(d)(8) and Citation 1, Item 1b, 29 CFR 1926.503(a)(1). The  
25 classifications of the violations as "Serious" and the proposed grouped  
26 penalty in the amount of Two Thousand Dollars (\$2,000.00) are approved.

27 The Board directs counsel for the complainant to submit proposed  
28 Findings of Fact and Conclusions of Law to the **NEVADA OCCUPATIONAL**

1 **SAFETY AND HEALTH REVIEW BOARD** and serve copies on opposing counsel  
2 within twenty (20) days from date of decision. After five (5) days time  
3 for filing any objection, the final Findings of Fact and Conclusions of  
4 Law shall be submitted to the **NEVADA OCCUPATIONAL SAFETY AND**  
5 **HEALTH REVIEW BOARD** by prevailing counsel. Service of the Findings of  
6 Fact and Conclusions of Law signed by the Chairman of the **NEVADA**  
7 **OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD** shall constitute the Final  
8 Order of the **BOARD**.

9 DATED: This 6th day of January, 2010.

10 NEVADA OCCUPATIONAL SAFETY AND HEALTH  
11 REVIEW BOARD

12 By  /s/  
13 TIM JONES, Chairman