

<p><b>IN THE MATTER OF</b></p> <p><b>DRYWALL</b></p> <p><b>SPECIALTIES, INC.</b></p>	<p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>	<p><b>BEFORE THE COMMISSIONER</b></p> <p><b>OF LABOR AND INDUSTRY</b></p> <p><b>HEARING DETERMINATION NO. 99-10</b></p> <p><b>MOSH CASE NO. W2450-002-99</b></p> <p><b>OAH CASE NO. 98-DLR-MOSH-0257554</b>  <b>Citation No. 302024757</b></p>
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**FINAL DECISION AND ORDER**

This matter arose under the Maryland Occupational, Safety and Health Act, Labor and Employment Article, Title 5, *Annotated Code of Maryland*. Following an inspection, the Occupational Safety and Health unit of the Division of Labor and Industry (“MOSH”) issued a citation to Drywall Specialties, Inc., (“the Employer”), alleging that the Employer violated various provisions of the MOSH safety standards concerning electrical hazards. The Employer contested the citation. Following an evidentiary hearing, Hearing Examiner Judith S. Singleton issued a Proposed Decision affirming the citations. The Employer filed a timely request for review.

Based upon a review of the entire record and consideration of the relevant law, the Commissioner affirms the Hearing Examiner’s findings of fact<sup>1</sup> and conclusions of

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<sup>1</sup> The Employer excepts to certain credibility findings made by the Hearing Examiner. The Commissioner has carefully reviewed the record, and finds no strong reasons why the Hearing Examiner’s credibility findings should be reversed. *Anderson v. Department of Public Safety & Corrections Servs.*, 330 Md. 187, 216-17 (1993).

More specifically, the Employer excepts to Finding of Fact 14, wherein the Hearing Examiner, in describing the condition of the accident site during the MOSH inspection on July 7, found that “[o]ne electrical conductor did not have a wire nut on it and therefore the wire was exposed.” The Employer contends that it was not in control of the property during the period between the accident and the date of the inspection, and “there is no evidence which supports any fact that the inspectors observations on 7/7/98 supports the actual condition present at the time of the accident which took place four days prior to this meeting.” To the contrary, MOSH Ex. 11, a photograph of the accident scene taken by the general contractor on the day of the accident, shows the “bare conductor.” The Commissioner finds no merit to the Employer’s exception.

The Employer excepts to Finding of Fact 19, wherein the Hearing Examiner found that employee James Appleton worked in the tenth floor men’s bathroom for “approximately one week prior to the accident.” The record

law,<sup>2</sup> and adopts the violation findings.

### **ORDER**

The Commissioner of Labor and Industry hereby ORDERS, this 8 day of November, 1999, that:

1. Citation 1, Item 1, alleging a serious violation of MOSH Standard 29 CFR §1926.21(b)(2), is AFFIRMED with a penalty of \$1,375.

2. Citation 2, Item 1, alleging a serious violation of MOSH Standard 29 CFR §1926.416(a)(1), is AFFIRMED with a penalty of \$1,375.

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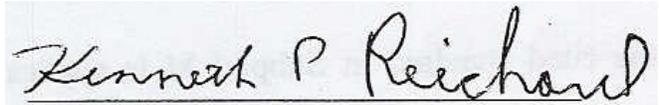
establishes that Appleton worked at this site for one day about a week before the accident. T. 45-46. This correction, however, does not affect the violation findings.

<sup>2</sup> Concerning the finding that the Employer violated 29 CFR §1926.21(b)(2) by failing to instruct its employees in the recognition and avoidance of electrical hazards, the Employer acknowledges that employee Frias, who was exposed to an electrical hazard, “did not receive safety training on electrical while employed by respondent.” Employer’s letter requesting review, item 20. However, in its review request, the Employer asks for consideration of the fact that it does have training in place, and offers to provide affidavits that “the foreman and one other mechanic on the Citation project did have electrical hazard training in the past (although not with present employer).” At the review hearing, the Employer again represented that additional evidence exists concerning electrical hazard training that is not part of the record. The purpose of a review hearing is to allow the parties the opportunity to present oral argument on the existing record, not to allow the admission of new or additional evidence. See COMAR 09.12.20.16C. The Hearing Examiner gave the Employer every opportunity to present evidence on the issue of its employees’ electrical hazard training, including holding the record open for two additional weeks after the hearing for this purpose. T. 192-203. Despite this fact, the Employer provided no additional evidence. The Employer’s request to present supplemental evidence is denied.

At the review hearing, the Employer renewed its argument that the general contractor or the electrical contractor should have been cited for the violations at issue in this case. “[I]t is well settled that an employer is liable for condition to which its workers are exposed, even if the employer did not create these conditions.” *Secretary of Labor v. Ramzel-Texas Services Inc.*, 16 OSCH (BNA) 1363 (1993). Additionally, as noted by the Hearing Examiner, the cited MOSH safety standards squarely place the burden of instruction and inspection for protection purposes with the Employer. 29 CFR §1926.21(b)(2) and 29 CFR §1926.416(a)(3). The Employer’s argument is therefore without merit.

3. Citation 2, Item 2, alleging a serious violation of MOSH Standard 29 CFR §1926.416(a)(3), is AFFIRMED with a penalty of \$1,375.

4. This Order becomes final 15 days after its issuance. Judicial review may be requested by filing a petition for judicial review in the appropriate circuit court. *See* Labor and Employment Article, § 5-215, *Annotated Code of Maryland*, and Maryland Rules, Title 7, Chapter 200.

A handwritten signature in black ink that reads "Kenneth P Reichard". The signature is written in a cursive style and is positioned above a thin horizontal line.

Kenneth P. Reichard  
Commissioner of Labor and Industry