

Heat Stress Safety Violations at Issue in Roofer's Death Case

How far an employer needs to go to protect workers from heat stress could be decided by the panel that hears appeals of OSHA violations.

Fueling the issue are Occupational Safety and Health Administration citations against a construction company, A.H. Sturgill Roofing Inc. of Dayton, Ohio, stemming from an investigation into the 2012 death of a temporary worker.

On June 7 in Washington, the Occupational Safety and Health Review Commission heard opposing opinions on why the OSHA violations should be upheld or discarded. The review commission's decision could determine how OSHA treats heat stress cases, which aren't covered by specific workplace standards, in the future.

OSHA alleges Sturgill failed to adequately protect workers from high temperatures by not providing heat-related training, not making sure workers drank adequate amounts of water, and not checking the background of the worker who died to be sure that the 60-year-old man was physically fit enough to do the job.

Conflicting Mandates

Sturgill's attorney, Robert Dunlevey in the Dayton office of Taft Stettinius & Hollister LLP, countered that if employers were required to ask workers about their medical conditions and age as OSHA wants, they would be in violation of federal laws banning discrimination based on age and health.

Dunlevey said Sturgill took precautions, such as offering water and assigning the elder worker the least strenuous task on the job site.

Because OSHA doesn't have a specific rule dealing with workplace heat hazards, the agency cited Sturgill with a violation of the general duty clause in addition to a training violation.

The clause is a provision of the 1970 law creating OSHA enabling the agency to cite employers who fail to adequately protect workers from known hazards likely to cause death or a serious injury that can be corrected by a "feasible" method.

Heat stress is a well-known hazard in the roofing industry, the Labor Department Office of the Solicitor's Senior Appellate Attorney Scott Glabman of Washington said.

In this case, Glabman said, Sturgill didn't provide training to the temporary workers on recognizing heat stress and proper clothing, and didn't allow time for the workers to acclimatize.

As the heat index rose to more than 100 degrees, supervisors should have closely monitored the workers for signs of heat stress, Glabman said.

Glabman dismissed Dunlevey's assertion the temperature was overstated. "The fact a worker died does show the heat was dangerous," Glabman said.

Six Years and Counting

The Sturgill case began in August 2012 when company workers were replacing a commercial roof in Miamisburg, Ohio, using a team of nine permanent and three temporary agency workers.

The crew started work at 6 a.m. Following a morning break, one of the temporary agency workers began acting disoriented and sweating profusely. The foreman told the worker to take a break and sit, then at 11:41 a.m. the worker collapsed and an ambulance was called.

The worker was admitted to a hospital with a temperature of 105.4 degrees and was diagnosed with heat stroke, according to court documents. He died 21 days later.

Following the death, OSHA opened its investigation and on Jan. 16, 2013, issued citations to Sturgill for two serious violations—failing to adequately train workers to recognize and avoid heat hazards—and a general duty clause violation for not taking precautions to protect the workers from high heat.

Sturgill appealed the citations and following a three-day hearing, an administrative law judge on Feb. 23, 2015, affirmed the violations and \$8,820 proposed fine.

Following the judge's decision, the three-member review commission took up the case. There isn't a deadline for when the commission will make a decision.

The case is Sec'y of Labor v. A.H. Sturgill Roofing Inc., OSHRC, No. 13-0224, 6/7/18.