

Limitation on a PPE Not Recognized Where Manufacturer's SOP Did Not Contain the Limitation

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Sec'y of Labor v. Midwest Steel, Inc., is a recent reminder that employers should be aware of and stay current with the safety features in Personal Protective Equipment (PPE) that are known in the industry. OSHRC No. 15-1471, 2017 WL 7370045 (Sept. 13, 2017). There, the Commission vacated a citation for alleged violation of the General Duty Clause following a fatal accident, because based on the information existing at the time of the accident, neither the industry nor the Respondent recognized the alleged hazardous condition.

In *Midwest Steel*, an employee died when he fell from a temporary work platform on the sixth floor down to the fourth floor of a building while doing welding work. For fall protection, the employee wore a personal fall arrest system device, which consisted of a wire rope choker, a harness, and a synthetic lanyard. It appeared that the accident happened due to melting of the synthetic lanyard while the employee was repairing a weld on the surface of a splice by preheating the welds. The employer was cited for violation of the General Duty Clause.

The Commission noted that to sustain the citation under the General Duty Clause, the Secretary needed to establish that the Respondent or the industry recognized the hazard at issue. Complainant argued that the hazard was recognized because “had Respondent read the most recent version of the Manufacturer’s SOP, in accordance with the ANSI standards, it would have known not to use the synthetic lanyard in hot areas of more than 180 degrees.” The Commission disagreed.

The Commission noted that the Manufacturer’s SOP that was in effect at the time of the accident reflected the hazards that were recognized by the Respondent and the industry at that time. The version of the Manufacturer’s SOP containing the 180 degree limitation on use of the synthetic lanyard did not exist at the time of the accident. Thus, Complainant failed to establish that the alleged hazard was recognized and did not meet its burden to sustain a citation for violation of the General Duty Clause.

Midwest Steel essentially emphasizes that employers should stay current with manufacturers’ recommendations concerning the limitations and use of personal protective equipment and any relevant safety features known in the industry. Any deviation from manufacturer’s recommendation or industry-known safety features should be assessed to ensure that the deviation provides the employees with at least equal protection from the hazard.