

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 01-1477

September Term, 2002

Filed On: December 20, 2002 [721183]

Kokosing Construction Co., Inc.,

Petitioner

v.

Secretary of Labor,

Respondent

American Road & Transportation Builders Association,

Amicus Curiae for Petitioner

Petition for Review of an Order from the Occupational Safety & Health Review Commission

Before: SENTELLE, HENDERSON, and TATEL, *Circuit Judges*.

J U D G M E N T

This cause was considered on the record from the Occupational Safety and Health Review Commission and on the briefs filed by the parties. Petitioner contests the Review Commission's affirmance of petitioner's citation for failing to provide adequate fall protection under 29 C.F.R. § 1926.501(b)(1) (2002) and challenges the Secretary's interpretation of the same regulation. For substantially the same reasons explained by the Review Commission, we deny the petition for review. The Secretary's interpretation of her regulation was reasonable, *see Martin v. OSHRC*, 499 U.S. 144, 150-51 (1991), and the Review Commission's decision was not arbitrary or capricious, *see 5 U.S.C. § 706(2)(A)* (2000); *A.E. Staley Mfg. Co v. Sec'y of Labor*, 295 F.3d 1341, 1345 (D.C. Cir. 2002). It is

ORDERED AND ADJUDGED that the petition for review of the order of the Occupational Safety and Health Review Commission be denied.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See Fed. R. App. P. 41(b)*; D.C. Cir. Rule 41.

Per Curiam

For the Court:

Mark J. Langer, Clerk

By:

Michael C. McGrail

Deputy Clerk