

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

July 9, 2020

Lyle W. Cayce
Clerk

No. 19-60592

SANDERSON FARMS, INCORPORATED (PRODUCTION DIVISION),

Petitioner

v.

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION,

Respondent

Petition for Review of an Order of the
Occupational Safety and Health Review Commission

Before WIENER, ENGELHARDT, and OLDHAM, Circuit Judges.

WIENER, Circuit Judge:

Petitioner Sanderson Farms, Inc. (“Sanderson”) petitions for review of a determination by the Occupational Safety and Health Review Commission (the “Commission”) that it violated various regulations of the Department of Labor’s Occupational Safety and Health Administration (“OSHA”). We find no error, so we deny Sanderson’s petition.

I. Background

The Secretary of Labor (“Secretary”) is charged by statute “with responsibility for setting and enforcing workplace health and safety standards” and has delegated that power to OSHA. *Martin v. OSHRC*, 499 U.S. 144, 147 (1991); Delegation of Authority and Assignment of Responsibility to the

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Assistant Secretary for Occupational Safety and Health, 77 Fed. Reg. 3912 (Jan. 25, 2012). Sanderson operates a chicken-processing plant in Waco, Texas that uses anhydrous ammonia as a refrigerant to freeze the processed chickens. In 2017, OSHA issued document requests to Sanderson and conducted inspections of its plant to check for compliance with OSHA's Process Safety Management of Highly Hazardous Chemicals ("PSM") standard, 29 C.F.R. § 1910.119. The PSM standard "contains requirements for preventing or minimizing the consequences of catastrophic releases of toxic, reactive, flammable, or explosive chemicals," expressly including anhydrous ammonia. 29 C.F.R. § 1910.119, Purpose. The PSM standard applies to Sanderson's plant because Sanderson uses more than ten thousand pounds of ammonia. *See* 29 C.F.R. § 1910.119, App'x A.

The Secretary issued Sanderson a citation charging six violations of the PSM standard. Two items from that citation are at issue in this petition: (1) Item 5a, which charges that Sanderson did not "establish and implement written procedures to maintain the on-going mechanical integrity of the process" with respect to safety cutouts, emergency stop testing procedures, and pressure vessel level control test procedures, in violation of 29 C.F.R. § 1910.119(j)(2); and (2) Item 5b, which charges that Sanderson "failed to perform inspections and tests on process equipment" including three compressor cutouts and two emergency stop buttons, in violation of 29 C.F.R. § 1910.119(j)(4)(i).

Both of the allegedly violated regulations are found in the section of the PSM standard that requires an employer to implement a mechanical integrity program, 29 C.F.R. § 1910.119(j). That section "contain[s] requirements for maintaining the mechanical integrity of process equipment in order to assure that such equipment is designed, installed, and operates properly," with the ultimate goal of "ensur[ing] that highly hazardous chemicals covered by the

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standard are contained within the process and not released in an uncontrolled manner.” Process Safety Management of Highly Hazardous Chemicals; Explosives and Blasting Agents, 57 Fed. Reg. 6356, 6388–89 (Feb. 24, 1992) (codified at 29 C.F.R. pt. 1910).

The safety cutouts of Item 5a and compressor cutouts of Item 5b refer to the same equipment, viz., devices that shut down ammonia compressors when monitored conditions—temperature, pressure, or oil pressure—fall outside of allowable limits. The emergency stops referred to in Items 5a and 5b are buttons inside and outside of the ammonia machinery room that, when pressed, shut down the flow of ammonia to respond to a release. The pressure vessel level control mentioned in Item 5a ensures that the level of ammonia in the pressure vessel stays low enough to avoid overflowing.

Sanderson contested the citation. The Secretary withdrew several citation items in May 2018, and an Administrative Law Judge (“ALJ”) held a hearing on the remaining items in August 2018. The ALJ affirmed Item 5a in its entirety and Item 5b with respect to the compressor cutouts and emergency stops. The ALJ vacated all other parts of the citation. Sanderson petitioned the Commission for discretionary review of the ALJ’s decision. When the Commission declined to direct the case for review, the ALJ’s order became the final order of the Commission on July 1, 2019. *See* 29 U.S.C. § 661; 29 C.F.R. § 2200.90(d) (2005). Sanderson now petitions this court for review of the Commission’s order.

II. Jurisdiction and Standard of Review

We have jurisdiction over this petition under 29 U.S.C. § 660. “Though the ALJ’s order became final only when the Commission declined to conduct discretionary review, we apply the same standard of review to the final decision here as we would if the Commission had directly issued its own decision.” *Excel Modular Scaffold & Leasing Co. v. OSHRC*, 943 F.3d 748, 753

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(5th Cir. 2019). We must affirm the ALJ’s findings of fact “if they are supported by substantial evidence on the record considered as a whole even if this court could justifiably reach a different result de novo.” *MICA Corp. v. OSHRC*, 295 F.3d 447, 449 (5th Cir. 2002) (quoting *Trinity Marine Nashville, Inc. v. OSHRC*, 275 F.3d 423, 426–27 (5th Cir. 2001)). “Substantial evidence is ‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’” *Excel Modular Scaffold & Leasing Co.*, 943 F.3d at 753 (quoting *Chao v. OSHRC*, 401 F.3d 355, 362 (5th Cir. 2005)). We may only overturn the ALJ’s legal conclusions if they are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706; *Trinity Marine Nashville, Inc.*, 275 F.3d at 427.

III. Analysis

Generally, the Secretary has the burden of proving “(1) that the cited standard applies; (2) noncompliance with the cited standard; (3) access or exposure to the violative conditions; and (4) that the employer had actual or constructive knowledge of the conditions through the exercise of reasonable due diligence.” *Sanderson Farms, Inc. v. Perez*, 811 F.3d 730, 735 (5th Cir. 2016). Sanderson contends that various parts of the citation should be vacated because: (1) The standards do not apply to the equipment referenced in the citation, (2) any violation of the standards did not create a hazard and did not expose employees to a hazard, (3) Sanderson did not violate the standards, and (4) Sanderson could not reasonably have had knowledge of any violative condition.

A. Whether the Mechanical Integrity Program Applies to the Equipment Cited in Items 5a and 5b

Sanderson contends that the standards cited in Items 5a and 5b—§ 1910.119(j)(2) and § 1910.119(j)(4)(i), respectively—do not apply to the compressor cutouts and emergency stops referenced in Items 5a and 5b

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because that equipment does not fall within the scope of the mechanical integrity program as defined by § 1910.119(j)(1). Sanderson does not contest that the pressure vessel level control is included. Section (j)(1) states: “(1) Application. Paragraphs (j)(2) through (j)(6) of this section apply to the following process equipment: . . . (iv) Emergency shutdown systems; [and] (v) Controls (including monitoring devices and sensors, alarms, and interlocks)” 29 C.F.R. § 1910.119(j)(1).

As for the compressor cutouts, Sanderson does not dispute that: (a) The compressors or their cutouts are “process equipment” as referred to in the opening part of section (j)(1)—that is, equipment “associated with” “any activity involving a highly hazardous chemical including any . . . handling . . . of such chemicals”—or (b) that the cutouts are “[c]ontrols” as specified in subsection (v). *See* 29 C.F.R. § 1910.119(b); *Process Safety Management*, 57 Fed. Reg. at 6389. That should end the inquiry.

Instead, Sanderson contends that because compressors are not included in subsection (j)(1), neither are their component parts, thus excluding the compressor cutouts. There is no support in the text of section (j)(1) for this interpretation. The text contains only two necessary qualifications: (1) that the equipment be process equipment, and (2) that the equipment’s type be one of those enumerated. The first requirement removes any possibility of a runaway regulation engulfing all interlocks in the entire plant. *See Process Safety Management*, 57 Fed. Reg. at 6389 (“Paragraph (j)(1) is intended to cover only that equipment associated with a process that is covered by this standard.”). The ALJ’s determination that the compressor cutouts are subject to the mechanical integrity program as delineated by subsection (j)(1) was, therefore, not an abuse of discretion or otherwise contrary to law.

As for the emergency stops, Sanderson argues that they are not included in the mechanical integrity program because (1) Sanderson’s witness testified

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