

June 2, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 05-60897
Summary Calendar

WILLIAMS INSULATION,

Petitioner,

versus

OCCUPATIONAL, SAFETY AND HEALTH REVIEW COMMISSION;
ELAINE CHAO, SECRETARY, DEPARTMENT OF LABOR,

Respondents.

Appeal from the United States
Occupational Safety and Health Review Commission
(Docket No. 05-0031)

Before REAVLEY, DAVIS and PRADO, Circuit Judges.

PER CURIAM:*

Williams Insulation petitions for review of a Final Order of the United States Occupational Safety and Health Review Commission relating to a citation and penalty for failure to ensure rooftop laborer Juan Gomez was protected by fall arrest systems in

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

violation of 29 C.F.R. 1926.501(b)(13). Reviewing the record for substantial evidence, we deny the petition because substantial evidence supports the finding that Gomez was engaged in construction-related rooftop activities without fall protection. Williams relies on the exception to the fall protection requirement provided in 29 C.F.R. § 1926.500(a)(1) for employees engaged in inspection, investigation or assessment of workplace conditions prior to the actual start of construction work. When a standard contains an exception to its general requirement, the burden of proving that the exception applies lies with the party claiming the benefit of the exception.¹ Williams introduced no witnesses and adduced no testimony to support its contention that Gomez was engaged in pre-work inspection and fall anchor installation at the time the inspection occurred. Other than the assertions of Williams's counsel and remarks of one compliance officer as to what Gomez claimed to be doing, there is nothing in the record to establish that Gomez was engaged in exempted activities while on the roof without fall protection.

PETITION DENIED.

¹ ConAgra Flour Milling Co., 15 BNA OSHC 1817, 1823, 1992 OSHD ¶29,808 (1992).