

Is the Employer at Fault When a Worker Disobeys Safety Procedures?

(The following story is based on a True Case)

Foreman Mitch McCoy of State Electric Co. studied the live panel board to see where he was to install a new circuit breaker for a neon sign in a parking garage. Suddenly he realized there was no main switch to de-energize the electric power. He decided to make a call to his supervisor at the company's main office.

"Listen, Joe, I've got a problem here. I can't shut down the main on this boxer," McCoy told his supervisor. "What should I do?"

"We could call the utility company and have them shut down all the power, but who knows how long that would take," supervisor Joe Lanny responded.

"Look, Mitch, just see if you can install the breaker hot. If you have a problem, let me know."

Mitch didn't want to shut down all the power, so he attempted to go ahead with the installation while the board was energized. Instead of using the proper protective equipment-insulated gloves, insulated tools, a face shield, a rubber mat-he used whatever materials were on hand to protect him from electrical exposure. He insulated his tools with tape and wrapped cardboard around the fingers of the gloves for insulation. Unfortunately, those measures were not enough to prevent an electric explosion from occurring, which burned McCoy's entire body.

Due to the serious nature of this accident, OSHA came in to investigate. The agency cited State Electric for failing to follow regulations governing work practices around electrical equipment.

State Electric contested the citation with the following defense:

- We have strict safety procedures for handling energized circuits.
- Mitch McCoy never called back his supervisor or obtained the proper safety gear before beginning work.
- McCoy knew he was disobeying company policy, but proceeded anyway.
- This was a case of unpreventable employee misconduct.

DECISION: State Electric is responsible for violating electrical safety regulations, ruled an administrative law judge. To prove that McCoy alone was responsible for safety violations, State Electric would have to show that it insisted on compliance with work rules and regularly enforced them, said the judge.

That was not the situation here where the supervisor basically left the decision up to McCoy on whether to proceed. The supervisor never instructed McCoy not to go ahead until he obtained the proper equipment. "The company's reliance on the good judgment

of an experienced electrician may have been reasonable, but it was not in compliance with OSHA regulations,” said the judge.

COMMENT: Rarely does the Review Commission allow the “unpreventable employee misconduct” excuse. Usually they will find some connection between the violation and a company wide laxness in enforcing safety rules or employee training. If a member of management is found to be at fault, such as the supervisor in this case, then the company can be cited because the supervisor represents the employer in the eyes of the law.

The best way to show that you are serious about enforcing safety rules is to discipline employees for infractions and to maintain records of your actions.