

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210



April 27, 1977

Honorable Richard Bolling
House of Representatives
Washington, D. C. 20515

Dear Congressman Bolling:

This is in response to your letter dated April 5, 1977, which transmitted correspondence from your constituent, Mr. Tony Ragan, regarding the use of protective footwear.

An Occupational Safety and Health Administration (OSHA) inspection of the Churchill Truck Lines was conducted on August 3, 1976. A citation was issued on August 17, 1976, alleging that the employer violated 29 CFR 1910.132(a) in that "...foot protection was not provided for employees who handled freight in the warehouse area and are subject to injury from falling materials." The employer contested this citation on August 27, 1976, and the contest was resolved by a Settlement Agreement with the Occupational Safety and Health Review Commission, an agency that is completely independent of the U.S. Department of Labor and OSHA. The employer withdrew his contest and was given an extension of the compliance abatement date to April 27, 1977, under the Settlement Agreement, which became a final order of the Commission on April 18, 1977.

Coordination with the OSHA Kansas City Area Office showed that the company's freight handlers sustained eight foot injuries in 1975 and two in 1976. The OSHA General Industry standards require personal protective equipment be used where there is a reasonable probability of injury that can be prevented by such protective equipment. In particular, in answer to Mr. Ragan's questions on safety shoes, the standard 29 CFR 1910.136 states: "Safety-toe footwear shall meet the requirements and specifications in American National Standard for Men's Safety-Toe Footwear Z41.1-1967." This standard outlines the compression and impact tests which safety-toe footwear must pass. Also, Section 4.2.1 of this standard states: "The safety footwear shall be constructed of suitable material for the exposure it is intended to receive and should provide comfort and wearability."

The use of personal protective equipment under conditions not required by established OSHA standards is solely a matter of employment conditions existing between the employer and his employees, and where applicable, subject to any labor/management contractual arrangements. The only recourse the employees now have to alter the requirement of wearing protective footwear is under Section 6(b) of the Occupational Safety and Health Act of 1970 (the Act)(copy enclosed). Section 6(b) outlines a procedure for modifying or revoking an OSHA standard.

Regarding Mr. Ragan's question on jurisdiction between OSHA and the U.S. Department of Transportation (DOT), the following information is provided. Under Section 4(b)(1) of the Act, the Secretary of Labor has authority over all working conditions of employees engaged in business except conditions with respect to which other Federal agencies exercise statutory authority to prescribe or enforce regulations affecting employee safety and health. The Bureau of Motor Carrier Safety, Federal Highway Administration, DOT, does not regulate the working condition involved, i.e., protective equipment for employees in materials handling operations. Therefore, the OSHA regulations apply.

Should Mr. Ragan have any further questions regarding OSHA and the standards, or the inspection in question, it is suggested he may find it more expedient to contact the OSHA Kansas City Area Office.

The address and telephone number are:

Area Director U.S. Department of Labor - OSHA 1150 Grand Avenue - 6th Floor 12 Grand Building
Kansas City, Missouri 64106 Telephone: 816-374-2756

If I may be of any further assistance, please feel free to contact me. Pursuant to your request, the enclosure is herewith returned.

Sincerely,

Bert M. Concklin
Deputy Assistant Secretary