

United States Court of Appeals
For the Eighth Circuit

No. 25-2769

Hall Trucking Inc.

Petitioner

v.

Secretary of Labor

Respondent

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

Submitted: September 24, 2026

Filed: October 28, 2026

Before LOKEN, BENTON, and ERICKSON, Circuit Judges.

BENTON, Circuit Judge.

The Occupational Safety and Health Administration (OSHA) cited Hall Trucking, Inc. for violating the general duty clause in 29 U.S.C. § 654(a)(1). An ALJ affirmed the citation. Hall Trucking appeals from the denial of its petition for discretionary review. Having jurisdiction under 29 U.S.C. § 660(a), this court affirms.

Hall Trucking moves oil rigs. While moving a rig, a truck fatally struck an employee. OSHA cited Hall Trucking for violating the general duty clause. The citation said a feasible method of abatement was an internal traffic control plan (ITCP). An ITCP could include, among other things, plans to minimize interactions between employees and trucks; requirements that employees wear high visibility gear; and employee training.

Hall Trucking disclosed David DiTommaso as an expert. The ALJ excluded his testimony, ruling that his knowledge was not specific enough and his opinions were legal conclusions. The ALJ allowed the Secretary's expert Kenneth J. Shorter to testify but excluded as a legal conclusion his opinion that Hall Trucking violated the general duty clause. The ALJ concluded that Hall Trucking violated the general duty clause.

I.

Hall Trucking argues that the ALJ's decision was not supported by substantial evidence because the Secretary did not show (1) Hall Trucking's measures were inadequate, (2) the steps it should have taken to avoid citation, or (3) that an ITCP was feasible and effective.

"We must uphold the ALJ's factual findings so long as they are 'supported by substantial evidence on the record considered as a whole.'" ***Wal-Mart Stores E., LP v. Acosta***, 919 F.3d 1073, 1076 (8th Cir. 2019), *quoting* 29 U.S.C. § 660(a). Substantial evidence is "not necessarily a preponderance of the evidence, but it is more than a scintilla . . . [that which] a reasonable mind might accept as adequate to support a particular conclusion with reference to the evidence as a whole." ***Associated Elec. Coop. v. Hudson***, 73 F.3d 845, 848 (8th Cir. 1996). "[W]e will uphold the ALJ's legal conclusions unless they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." ***Wal-Mart Stores***, 919 F.3d at 1076 (cleaned up).

The general duty clause requires that employers provide “employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm.” 29 U.S.C. § 654(a)(1). For a violation of the general duty clause, the Secretary must prove:

(1) an activity or condition in the employer’s workplace presented a hazard to an employee, (2) either the employer or the industry recognized the condition or activity as a hazard, (3) the hazard was likely to or actually caused death or serious physical harm, and (4) a feasible means to eliminate or materially reduce the hazard existed.

SeaWorld of Fla., LLC v. Perez, 748 F.3d 1202, 1207 (D.C. Cir. 2014). See *McKie Ford, Inc. v. Secretary of Labor*, 191 F.3d 853, 856 (8th Cir. 1999) (summarizing the same elements). At issue here is element 4, whether feasible means to eliminate or materially reduce the hazard existed. *SeaWorld*, 748 F.3d at 1207.

To show feasible means, the Secretary must “specify the particular steps a cited employer should have taken to avoid citation, and . . . demonstrate the feasibility and likely utility of those measures.” *St. Joe Mins. Corp. v. Occupational Safety & Health Rev. Comm’n*, 647 F.2d 840, 844 (8th Cir. 1981), citing *National Realty & Constr. Co. v. OSHRC*, 489 F.2d 1257, 1268 (D.C. Cir. 1973). “When an employer has existing safety procedures, the burden is on the Secretary to show that those procedures are inadequate.” *SeaWorld*, 748 F.3d at 1215.

A.

Hall Trucking argues that its existing safety measures are adequate. To determine adequacy, this court compares them to “the precautions a reasonably prudent employer familiar with the circumstances of the industry would take.” See *BHC Nw. Psych. Hosp., LLC v. Secretary of Labor*, 951 F.3d 558, 564 (D.C. Cir. 2020) (cleaned up). The Secretary may prove the inadequacy of safety procedures by showing the employer did not follow them or properly communicate them to employees. *Id.* at 565 (An employer “does not satisfy its obligation under the General Duty Clause” by putting safety measures in a manual “unless those

measures are actually followed and enforced.”); **Roadsafe Traffic Sys., Inc.**, 2021 WL 5994023, at *6 (OSHRC Dec. 10, 2021) (“[T]he Secretary may demonstrate that an employer’s existing safety procedures were inadequate by showing that the employer failed to properly communicate those procedures to its employees.”).

Hall Trucking’s safety procedures did list back-up alarms, back-up cameras, employee training, high-visibility gear, and firing employees who did not follow safety rules. Their procedures, however, were inadequate. During the incident here, the back-up camera had glare, the spotter had his back turned, and employees were not wearing high-visibility gear. Employees generally ignored back-up alarms. Hall Trucking did not give employees written policies for struck-by hazards. Substantial evidence supports the ALJ’s finding that Hall Trucking’s safety measures were inadequate.

B.

Hall Trucking argues the Secretary did not show the steps it should have taken to avoid citation because an ITCP does not provide specific steps.

The Secretary can show specific steps to avoid citation by proposing a process where an employer chooses between alternative means to abate a hazard. *See UHS of Westwood Pembroke Inc. v. Occupational Safety & Health Rev. Comm’n*, 2023 WL 3243988, at *2 (3d Cir. May 4, 2023) (The Secretary may “propose each measure as an alternative means of abatement.”) (unpublished). *See generally Professional Sec. Consultants, Inc.*, 2024 WL 5395961, at *26 (OSHRC Dec. 26, 2024) (“Where a hazard cannot be abated with a single measure, it is permissible for OSHA to require the employer to engage in a process approach to abatement.”) (cleaned up); *Pepperidge Farm, Inc.*, 1997 WL 212599, at *3 (OSHRC Apr. 26, 1997) (upholding a process with “choices among a menu of alternatives”).

According to the record here, developing an ITCP—a process where an employer chooses between alternative means of abating struck-by hazards—includes different options to reduce hazards, like plans to minimize interactions between

employees and trucks, requiring high visibility gear, and employee training. Substantial evidence supports the ALJ's finding that an ITCP provides specific steps to avoid citation.

C.

Hall Trucking counters that the Secretary did not present substantial evidence that an ITCP was feasible or effective because ITCPs are too rigid and are not an industry standard.

For purposes of OSHA, “feasible” means “capable of being done, executed, or effected.” *Friends of the Boundary Waters Wilderness v. Robertson*, 978 F.2d 1484, 1487 (8th Cir. 1992), citing *American Textile Manus. Inst., Inc. v. Donovan*, 452 U.S. 490, 509 (1981). A measure is “effective” if it “materially reduce[s] the hazard,” or “significantly reduce[s] the likelihood of the accident.” *F & H Coatings, LLC v. Acosta*, 900 F.3d 1214, 1228–29 (10th Cir. 2018).

Expert testimony and use in similar workplaces can show a measure is feasible and effective. See *Puffer's Hardware, Inc. v. Donovan*, 742 F.2d 12, 19 (1st Cir. 1984) (similar workplaces). See generally *UHS of Westwood Pembroke, Inc.*, 2022 WL 774272, at *46 (OSHRC Mar. 3, 2022) (similar workplaces); *Integra Health Mgmt., Inc.*, 2019 WL 1142920, at *14 (OSHRC Mar. 4, 2019) (expert testimony). The Secretary's expert testified that moving an oil rig is like working on a highway, where ITCPs are used. He concluded that an ITCP would reduce the risk of a vehicle hitting an employee—substantial evidence that an ITCP is feasible and effective.

Hall Trucking's argues that ITCPs are not an industry standard. Feasibility turns on “whether a precaution is recognized by safety experts as feasible, not whether the precaution's use has become customary.” *National Realty*, 489 F.2d at 1266 n.37.

Hall Trucking also claims ITCPs are too rigid to be effective because work site conditions would require the ITCPs to change 50 to 100 times a day. According

to the record, ITCs are flexible, account for site-specific conditions, and do not need continuous revision. The ALJ's decision is supported by substantial evidence.

II.

Hall Trucking argues that the ALJ erred by applying the general duty clause because 29 C.F.R. § 1926(b)(4) replaces the general duty clause in this context. Hall Trucking waived this argument.

“No objection that has not been urged before the Commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.” 29 U.S.C. § 660(a). A party waives any objections “not raised in the petition for discretionary review.” *Wal-Mart Stores*, 919 F.3d at 1078. See *Dakota Underground, Inc. v. Secretary of Labor*, 200 F.3d 564, 567 (8th Cir. 2000) (same). “An aggrieved party desiring to preserve an issue for judicial review must raise it before the ALJ, articulate it clearly in its [petition for discretionary review], and offer a modicum of developed argumentation in support of it.” *Frank Lill & Son, Inc. v. Secretary of Labor*, 362 F.3d 840, 844 (D.C. Cir. 2004).

Hall Trucking did not argue in its petition that 29 C.F.R. § 1926(b)(4) replaces the general duty clause. Hall Trucking claims it presented the issue by arguing that spotters and back-up alarms were adequate measures. Arguing that existing measures were adequate is not the same as arguing that 29 C.F.R. § 1926.601(b)(4) replaces the general duty clause. The argument is waived.

III.

Hall Trucking argues that the ALJ's rulings on expert witnesses were arbitrary and capricious because the ALJ: (1) ruled that DiTommaso was unqualified, (2) excluded his opinions as legal conclusions but allowed similar opinions by the Secretary's expert, and (3) made arbitrary and capricious credibility determinations. An expert's opinion is admissible if the witness is qualified and the testimony is relevant and reliable. See *Lauzon v. Senco Prods., Inc.*, 270 F.3d 681, 687 (8th Cir.

2001); **Fed. R. Evid. 702**. See also **29 C.F.R. § 2200.71** (“The Federal Rules of Evidence are applicable” in OSHRC proceedings.).

The ALJ’s decision that DiTommaso was unqualified was not arbitrary and capricious. Hall Trucking believes that DiTommaso’s experience as an OSHA compliance officer made him an expert on hazardous conditions and workplace accident investigations. The ALJ’s ruling that this is not sufficient specialized knowledge about traffic control was not arbitrary and capricious. See ***Kumho Tire Co. v. Carmichael***, 526 U.S. 137, 156 (1999) (noting “the question before the trial court was specific, not general,” so the Court decided whether the “expert had sufficient specialized knowledge”). DiTommaso’s opinions were based only on his evaluation of the evidence. Since he did not analyze the evidence using scientific or technical knowledge, excluding his opinions as legal conclusions was not arbitrary and capricious.

The Secretary’s expert had specific experience in traffic control, so the ALJ’s conclusion that he was qualified was not arbitrary and capricious. See ***id.*** The Secretary’s expert based his opinions on technical experience with ITCs, so the ALJ’s decision to admit them was not arbitrary and capricious. ***Id.***

The ALJ’s reliability determinations were not arbitrary and capricious. Fact finders “have substantial latitude to determine whether specific expert testimony is reliable.” ***United States v. Larry Reed & Sons P’ship***, 280 F.3d 1212, 1215 (8th Cir. 2002). This court “accepts the ALJ’s credibility determinations unless they are patently unsupportable.” ***SeaWorld***, 748 F.3d at 1208 (cleaned up). Since the Secretary’s expert had personal experience with ITCs, the ALJ’s finding that he was reliable was not arbitrary and capricious. See ***United States v. Dixon***, 180 F.4th 1174, 1176 (8th Cir. 2026) (“personal, subjective experience” is sufficient for expert to testify on subject). DiTommaso had no experience in traffic control, so the ALJ properly concluded his testimony was unreliable.

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The petition for review is denied.
