



KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

WENDELL H. FORD
GOVERNOR

IRIS R. BARRETT
EXECUTIVE DIRECTOR

CAPITAL PLAZA TOWER
FRANKFORT, KENTUCKY 40601
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7-3-74

H. L. STOWERS
CHAIRMAN

MERLE H. STANTON
MEMBER

CHARLES B. UPTON
MEMBER

KOSHRC # 14

COMMISSIONER OF LABOR OF KENTUCKY

COMPLAINANT

VS.

SHELTON METROLOGY LABORATORY, INC.

RESPONDENT

DECISION AND ORDER OF
REVIEW COMMISSION

Before STOWERS, Chairman, UPTON and STANTON,
Commissioners.

STOWERS, CHAIRMAN:

Under date of May 30, 1974, Decision, Findings of Fact, Conclusions of Law, and Recommended Order was issued by this Commission in this case, to become a final order thirty days from date of the decision unless called for review by the Commission.

Pursuant to Section 48 of Rules of Procedure of this Commission, an aggrieved party may petition for discretionary review of a decision of a hearing officer. On June 14, 1974, this Commission received Discretionary Review; Petition from the respondent, and as a basis for this petition, it was stated that due consideration was not given in the assessments of the penalties, the only matter under contest by admission of the respondent.

Respondent's petition for discretionary review is granted by this Commission.

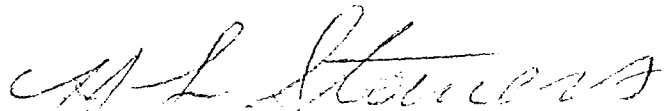
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Respondent, in seeking that the penalties be vacated, objects to the methodology used in the computation of penalties and to the degree of exposure to hazards, the violation of which was not contested.

Assessment of amounts of penalties rests in this Commission, when such assessment is contested before this Commission. The complainant in this case submitted evidence before the hearing officer as to the violations and proposed penalties and in the opinion of this Commission justified the assessment of the proposed penalties, and it is so ordered.

ORDER

On the basis of our review of the entire record, it is ordered that the Decision of the Hearing Officer be and the same is hereby affirmed.



H. L. Stowers, Chairman

Concurring:

S/ Charles B. Upton

Charles B. Upton, Commissioner

S/ Merle H. Stanton

Merle H. Stanton, Commissioner



KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

CAPITAL PLAZA TOWER

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

May 30, 1974

WENDELL H. FORD
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MEMBER

KOSHRC # 14

COMMISSIONER OF LABOR OF KENTUCKY

COMPLAINANT

VS

SHELTON METROLOGY LABORATORY, INC.

RESPONDENT

NOTICE OF RECEIPT OF RECOMMENDED
DECISION OF HEARING OFFICER
AND ORDER

All parties to the above-styled action before this Review Commission will take notice that pursuant to our Rules of Procedure a recommended decision of our hearing officer, the Honorable Lloyd Graper, has this day been received and is attached hereto as a part of this Notice and Order of this Commission.

You will take further notice that pursuant to Section 48 of our Rules of Procedure, any party aggrieved by this decision may submit a petition for discretionary review by this Commission.

Pursuant to Section 47 of our Rules of Procedure, jurisdiction in this matter now rests solely in this Commission and it is hereby ordered that unless this decision as recommended by the hearing officer in this matter is called for review and further consideration by a member of this Commission within 30 days of this date, the decision of the hearing officer is adopted and affirmed as the decision and final order of this Commission in the above-styled matter.

Parties will not receive further communication from the Review Commission unless a Direction for Review has been filed by one or more Review Commission members.


Copy of this Notice and Order has been served by mailing or personal delivery on the following:

Commissioner of Labor of Kentucky
Attention: Honorable Michael D. Ragland
OSHA Coordinator

Honorable James I. Foley, General Counsel
Department of Labor
Frankfort, Kentucky 40601

Shelton Metrology Laboratory, Inc.
P. O. Box 3074
Paducah, Kentucky 42001

This 30th day of May, 1974.


Iris R. Barrett, Executive Director

COMMONWEALTH OF KENTUCKY
KENTUCKY OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

KOSHRC DOCKET NO. 14

COMMISSIONER OF LABOR OF KENTUCKY

COMPLAINANT

V.

DECISION, FINDINGS OF
FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER

SHELTON METROLOGY LABORATORY, INC.

RESPONDENT

* * * * *

This hearing was held on January 30, 1974, at the offices of the Department of Highways, Paducah, Kentucky, under the provisions of KRS 338 of the Kentucky Revised Statutes dealing with the safety and health of employees, which authorizes the Review Commission to hear and rule on appeals from citations, notifications, and variances issued under the provisions of this Chapter and to adopt and promulgate rules and regulations with respect to the procedural aspect of its hearings. Under the provisions of KRS 338.081, hearing authorized by the provisions of this Chapter may be conducted by a Hearing Officer appointed by the Review Commission to serve in its place. After hearing an appeal, the Review Commission may sustain, modify, or dismiss a citation or penalty.

On November 16, 1973, as a result of an inspection made on November 2, 1973, at a place of employment located at Tyler Park on the Southeast side of Paducah, Kentucky, described as a place for the manufacture^{of}/precision measuring equipment, the Kentucky Department of Labor, Division of Occupational Safety and Health Compliance, issued a citation alleging eight non-serious violations. On the basis of such inspection, it was alleged that respondent violated the provisions of KRS Chapter 338 (Kentucky Occupational Safety and Health Act of 1972), in the following respects:

Item #1

The standard, regulation or section of KRS Chapter 338 allegedly violated was 29CFR 1910.252(a)(2)(ii)(b) (as adopted by OSH-11) and a description of the alleged violation was:

A cylinder was located where it could be knocked over or damaged by passing or falling objects (receiving and shipping dept.).

and the date by which the alleged violation must be corrected was without delay but no later than November 29, 1973.

Item #2

The standard, regulation or section of KRS Chapter 338 allegedly violated was 29CFR 1910.22(a)(2) (as adopted by OSH-11) and a description of the alleged violation was:

Floor areas were not maintained in so far as possible, a dry condition (receiving and shipping dept.; air conditioning room).

and the date by which the alleged violation must be corrected was without delay but no later than November 29, 1973.

Item #3

The standard, regulation or section of KRS Chapter 338 allegedly violated was 29CFR 1910.157(d)(3)(i) (as adopted by OSH-11) and a description of the alleged violation was:

Portable fire extinguishers had not been examined and/or recharged or repaired at regular intervals not more than one (1) year apart (shipping and receiving dept.; machine shop; assembly area),

and the date by which the alleged violation must be corrected was without delay but no later than November 29, 1973.

Item #4

The standard, regulation or section of KRS Chapter 338 allegedly violated was 29CFR 1910.157(d)(3)(iv) (as adopted by OSH-11) and a description of the alleged violation was:

Portable fire extinguishers did not have durable tags attached to show maintenance or re-charge dates (cleaning room; air conditioning room).

and the date by which the alleged violation must be corrected was without delay but no later than November 29, 1973.

Item #5

The standard, regulation or section of KRS Chapter 338 allegedly violated was 29CFR 1910.242(b) (as adopted by OSH-11) and a description of the alleged violation was:

Compressed air being used for cleaning purposes was not reduced to less than thirty (30) p.s.i. (machine shop),

and the date by which the alleged violation must be corrected was without delay but no later than November 29, 1973.

Item #6

The standard, regulation or section of KRS Chapter 338 allegedly violated was 29CFR 1910.219(e)(3) (as adopted by OSH-11) and a description of the alleged violation was:

Vertical and inclined belts which were less than seven (7') feet from the floor were not guarded (belt sander, machine shop; pulley-belt drive for heating equipment, air conditioning room),

and the date by which the alleged violation must be corrected was without delay but no later than December 13, 1973.

Item #7

The standard, regulation or section of KRS Chapter 338 allegedly violated was 29CFR 1910.219(e)(1) (as adopted by OSH-11) and a description of the alleged violation was:

Horizontal belts which were seven (7') feet or less from the floor were not guarded (air compressor, air conditioning room; drill press, receiving area).

and the date by which the alleged violation must be corrected was without delay but no later than December 13, 1973.

Item #8

The standard, regulation or section of KRS Chapter 338 allegedly violated was 29CFR 1910.219(d)(1) (as adopted by OSH-11) and a description of the alleged violation was:

Pulleys which were seven (7') feet or less from the floor or working platform were not guarded (belt sander, machine shop; pulley-belt drive for heating equipment, air compressor, air conditioning room; drill press, receiving area).

and the date by which the alleged violation must be corrected was without delay but no later than December 13, 1973.

On the same date, a notification of proposed penalty was sent to respondent by the Kentucky Department of Labor, Division of Occupational Safety and Health Compliance, which proposed no penalty for Item #1, no penalty for Item #2, no penalty for Item #3, no penalty for Item #4, a proposed penalty of \$31.00 for Item #5, no penalty for Item #6, no penalty for Item #7, and a proposed penalty of \$37.00 for Item #8, making a total for all alleged violations of \$68.00.

By letter dated December 11, 1973, Paul Harrington, Director of Safety of Shelton Metrology Laboratory, Inc., wrote to the Commissioner of Labor and said, "This is to advise you that we wish to contest the penalties proposed for Items #5 and #8 of Citation #1 issued under the reference case."

On December 17, 1973, a notice of receipt of contest was mailed to the Commissioner of Labor and to the respondent. Such notice included a notice to employees of respondent and a form for a certification by respondent that the notice supplied by the Commission advising affected employees of the case and that a copy of the employer's notice of contest were posted at each place where the Kentucky Occupational Safety and Health Act

Citation is required to be posted.

On December 17, 1973, the Kentucky Department of Labor, Division of Occupational Safety and Health Compliance, certified to the Occupational Safety and Health Review Commission that on November 16, 1973, a citation was issued; that on November 16, 1973, a notice of proposed penalty was sent and it provided for penalties totaling \$68.00; and that on December 13, 1973, a notice of contest was received from the employer.

On December 21, 1973, the Occupational Safety and Health Review Commission received a certificate of service from the respondent dated December 19, 1973, on which it was indicated that no affected employee was represented by an authorized employee representative and that the notice of contest was posted at each place where the Kentucky Occupational Safety and Health Act Citation was required to be posted.

On January 10, 1974, the parties were advised that the case had been assigned to hearing officer, Lloyd Graper, and that all pleadings and papers were to be filed with Mr. Graper until a decision in the case was made by him.

On January 16, 1974, a notice of hearing was mailed to each of the parties.

On December 28, 1973, a copy of the complaint was received by the Occupational Safety and Health Review Commission.

On January 21, 1974, respondent wrote to the hearing officer, by letter, indicating in answer to the complaint filed

against respondent, respondent took exception to allegations 8 and 9, and indicated that they did not feel that due consideration was given in assessing the penalties, and that they did not object to or contest the alleged violations in their letter of contestment. Only the matter of the proposed penalties is under contest.

After hearing the testimony of the witnesses, and having considered the same together with the exhibits, stipulations and representations of the parties, it is concluded that the substantial evidence, on the record considered as a whole, supports the following findings of fact:

FINDINGS OF FACT

1. It is, upon the stipulation of the parties, found that the Kentucky Occupational Safety and Health Act was approved by the United States Department of Labor on July 23, 1973; that respondent was engaged in the business of manufacturing of precision measuring equipment; that respondent was subject to the Kentucky Occupational Safety and Health provisions on the date of inspection of its place of employment; that respondent's gross annual volume of business is approximately \$500,000.00; that the average number of employees working for respondent is eleven; and that respondent does not contest the alleged violations as such, but does contest the amount of the penalties assessed for Items #5 and #8.

2. It is, upon the stipulation of the parties, and upon the findings of the hearing officer, found that the violations

described under Items #1 through #8 did in fact occur.

Upon the basis of the foregoing, the hearing officer makes the following:

CONCLUSIONS OF LAW

1. Limiting the Review Commission's review to the penalties proposed for Items #5 and #8, as agreed upon by the parties, appears appropriate under the circumstances, since it does not appear that error would result from not reviewing the unchallenged citation for the violations set forth as Items #1 through #8.

2. As to Items #5 and #8, the Compliance Officer, as an agent of the Commissioner of Labor, gave due consideration to the criteria prescribed by statute and gave them proper weight under the circumstances in assessing the penalties. As to Items #5 and #8, the Commissioner has met his burden of proof, and both the citation and the proposed penalty of \$31.00 for Item #5 and \$37.00 for Item #8 and the proposed abatement date of November 29, 1973, for Item #5 and December 13, 1973, for Item #8 should stand.

RECOMMENDED ORDER

IT IS ORDERED that the citation, the proposed penalty
date
of \$31.00 and the proposed abatement/of November 29, 1973, for Item #5, and the citation, the proposed penalty of \$37.00 and the proposed abatement date of December 13, 1973, for Item #8, shall be and the same are hereby sustained.

DATED: May , 1974
Frankfort, Kentucky


LLOYD GRAPER
HEARING OFFICER, KOSHRC