

Done



143 (166)

JULIAN M. CARROLL



GOVERNOR

IRIS R. BARRETT
EXECUTIVE DIRECTOR

*KOSHRC
Decision
& Order #166*

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

CAPITAL PLAZA TOWER /

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

September 22, 1975

H. L. STOWERS
CHAIRMAN

MERLE H. STANTON
MEMBER

CHARLES B. UPTON
MEMBER

KOSHRC # 143

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

OSHKOSH B'GOSH, INC.

RESPONDENT

DECISION AND ORDER OF
REVIEW COMMISSION

Before STOWERS, Chairman; STANTON, Commissioner.

The Recommended Order of Hearing Officer Roger D. Riggs, dated August 1, 1975, is presently before this Commission for review.

Upon thorough review of the entire record in this case, it is the order of the Review Commission that that part of the Recommended Order vacating the proposed penalties for Items 8 and 9 be and it hereby is REVERSED. It is the further order of the Commission that the penalties be reinstated as proposed by the Department of Labor, and the Hearing Officer's decision is AFFIRMED in all other respects not inconsistent with this opinion.

H. L. Stowers

H. L. Stowers, Chairman

/s/ Merle H. Stanton

Merle H. Stanton, Commissioner

Date: September 22, 1975
Frankfort, Kentucky

DECISION NO. 166

This is to certify that a copy of this Decision and Order of Review Commission has been served by mailing or personal delivery on the following:


Commissioner of Labor
Commonwealth of Kentucky
Frankfort, Kentucky 40601
Attention: Honorable Michael D. Ragland
Executive Director for
Occupational Safety & Health

Honorable Earl M. Cornett
General Counsel
Department of Labor
Frankfort, Kentucky 40601
Assistant Counsel

Mr. Jacob R. Haffner
Southern Production Manager
OSHKOSH B'GOSH, INC.
Post Office Box 408
Columbia, Kentucky 42728

(Certified Mail #467080)

This 22nd day of September, 1975.


Iris R. Barrett
Executive Director



143 (143)

Done

JULIAN M. CARROLL
~~WENDALL H. FORD~~
GOVERNOR
IRIS R. BARRETT
EXECUTIVE DIRECTOR

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION
CAPITAL PLAZA TOWER
FRANKFORT, KENTUCKY 40601
PHONE (502) 564-6892

H. L. STOWERS
CHAIRMAN
MERLE H. STANTON
MEMBER
CHARLES B. UPTON
MEMBER

August 1, 1975

KOSHRC # 143

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

OSHKOSH B'GOSH, INC.

RESPONDENT

NOTICE OF RECEIPT OF
RECOMMENDED ORDER, AND
ORDER OF THIS COMMISSION

All parties to the above-styled action before this Review Commission will take notice that pursuant to our Rules of Procedure a Decision, Findings Of Fact, Conclusions Of Law, And Recommended Order is attached hereto as a part of this Notice and Order of this Commission.

You will further take notice that pursuant to Section 48 of our Rules of Procedure, any party aggrieved by this decision may within 25 days from date of this Notice 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, Findings Of Fact, Conclusions Of Law, And Recommended Order is called for review and further consideration by a member of this Commission within 30 days of this date, it is adopted and affirmed as the Decision, Findings Of Fact, Conclusions Of Law, 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
Commonwealth of Kentucky
Frankfort, Kentucky 40601
Attention: Honorable Michael D. Ragland
Executive Director for
Occupational Safety & Health

Honorable Earl M. Cornett
General Counsel
Department of Labor
Frankfort, Kentucky 40601
Attention: Peter J. Glauber
Assistant Counsel

Mr. Jacob R. Haffner (Certified Mail #469047)
Southern Production Manager
OSHKOSH B'GOSH, INC.
Post Office Box 408
Columbia, Kentucky 42728

This 1st day of August, 1975.



Iris R. Barrett
Executive Director

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

KOSHRC #143

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

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

OSHKOSH B'GOSH, INC.

RESPONDENT

* * * * *

On April 21, 1975 an inspection took place at a manufacturing plant of Oshkosh B'Gosh, Inc. located at Industrial Road, Columbia, Kentucky. As a result of the inspection of respondent's plant, the Kentucky Department of Labor, Division of Occupational Safety and Health, issued a citation to respondent charging ten other than serious violations of the provisions of KRS Chapter 338 (Kentucky Occupational Safety and Health Act of 1972). Respondent contested two of the charges which were described in the citation as follows:

Item number 8 of the citation charged an alleged violation of 29 CFR 1910.212 (a) (3) (ii) (as adopted by 803 KAR 2:020) and was described as:

The point of operation of machines whose operations exposes employees to injury were not guarded (single needle machine, sliding zipper stop machine, parts dept.; double needle machine, throughout plant).

The date by which the alleged violation must be corrected

was stated as June 13, 1975 and a penalty of \$37.00 was proposed.

Item number 9 of the citation alleged a violation of the National Electrical Code, Article 110-17 as adopted by 1910.309(a) (as adopted by 803 KAR 2:020) and was described as:

Live parts of electrical equipment operating at 50 volts or more were not guarded against accidental contact by approved cabinets or other forms of approved enclosures (fuse tester, maintenance shop).

The date by which the alleged violation must be corrected was stated as May 15, 1975 and a penalty of \$37.00 was proposed.

On May 2, 1975, the Department of Labor received a letter from respondent stating employer's intention to contest these alleged violations. Thereafter the Department of Labor issued a complaint, alleging the ten violations as previously noted and proposing said penalty amounts.

The proper notices were promptly sent to the parties and a letter certifying that the notice had been duly posted was received by the Review Commission on May 9, 1975. The certification from respondent also stated that the name and address of the local union representing affected employees is:

Local No. 447
United Garment Workers of America
AFL-CIO

Hearing was held pursuant to notice on June 3, 1975 in the offices of Oshkosh B'Gosh, Inc. in Columbia, Kentucky under the provisions of KRS 338.071 (4), a section of Chapter 338 of the Kentucky Revised Statutes dealing with the safety and health of employees. This statute authorizes the Review Commission to hear and rule on appeals from citations, notifications, and variances

issued under the provisions of said Chapter and to adopt and promulgate rules and regulations concerning the procedural aspects of its hearings. By virtue of the provisions of KRS 338.081, hearings authorized by the provisions of this Chapter may be conducted by a hearing Officer appointed by the Review Commission to represent the Commission in this manner. Following the hearing of an appeal, or on review of the decision of the hearing officer by its own motion, the Review Commission may sustain, modify, or dismiss a citation or penalty.

After hearing the testimony of the witnesses, and having considered the same together with the 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

1. There were an undetermined number of machines having points of operation which were unguarded exposing employees to possible injury.

2. Live electric parts of "fuse tester" operating at 50 volts or more were not guarded against accidental contact by any type of protective covering or enclosure.

3. Upon visual observation and explanation of the operations of the sliding zipper stop machines, it appeared that the points of operation of these machines were adequately guarded.

4. Until the time of the hearing no injuries had occurred during the year 1975 as a result of the use of the machines and devices which are in contest in this action.

Upon the basis of the foregoing, the Hearing Officer makes the following:

CONCLUSIONS OF LAW

A violation of the standard, requiring guarding of points of operation, obviously occurred. There were, without argument, some machines which did not have adequate guards on the date of the inspection.

The problem next becomes a determination of how extensive the violation might have been. The compliance officer testified that there were ten double needle machines and two single needle machines which were not properly guarded. He was not able, however, to remember or determine how he arrived at these figures. His recollection was that the personnel of respondent checked the various machines and gave him these figures as the number of those unguarded. He could not recall from his own knowledge nor did he testify that he ever knew from personal observation how many unguarded machines there were. Respondent on the other hand did not deny that there were some unguarded machines.

The compliance officer also expressed the feeling that one may still be injured even where the machines were guarded since it was possible to get one's finger in the path of the needle beneath the 1/4 to 1/2 inch space below the guard. Upon viewing the machine guards, such an injury appeared nearly impossible where material is taking up part of the space beneath the guard.


The zipper sliding machines were guarded, and adequately so, from contact with the points of operation.

Under the circumstances it does not appear that a penalty would be justified in this instance.

The violation concerning the fuse tester also occurred but again the evidence does not support the imposition of a penalty since (1) there is no evidence as to how often it is used, (2) there is no evidence as to the method by which it is used, or (3) there is no evidence of the extent of employee exposure.

RECOMMENDED ORDER

IT IS ORDERED AND ADJUDGED that the citation for Items numbered 8 and 9 hereby are SUSTAINED and the proposed penalties for these items hereby are VACATED.



ROGER D. RIGGS
HEARING OFFICER

DATED: August 1, 1975
Frankfort, Kentucky

DECISION NO. 143