



JULIAN M. CARROLL

~~WENDELL FORD~~

GOVERNOR

IRIS R. BARRETT

EXECUTIVE DIRECTOR

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

104 Bridge Street

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

March 2, 1976

H. L. STOWERS

CHAIRMAN

MERLE H. STANTON

MEMBER

CHARLES B. UPTON

MEMBER

KOSHRC # 152

PUBLIC SERVICE COMMISSION OF  
KENTUCKY (For an on Behalf of  
Commissioner of Labor)

COMPLAINANT

VS.

KENTUCKY UTILITIES COMPANY

RESPONDENT

DECISION AND ORDER OF  
REVIEW COMMISSION

Before STOWERS, Chairman; UPTON and STANTON, Commissioners.

UPTON and STANTON, Commissioners:

The Recommended Order of Hearing Officer John T. Fowler, Sr., dated Oct. 29, 1975, is presently before the Commission for review.

Upon thorough review of the entire record before it, it is the majority opinion of this Commission that the evidence herein does not support the vacation of Citation 1, Item #3 as proposed by the Hearing Officer in his Recommended Decision. That item shall be and it hereby is REINSTATED as originally cited by the Department of Labor. This Commission has further determined that Complainant carried its burden of proof with regard to Citation 1, Item #4 and the decision of the Hearing Officer sustaining that violation is hereby AFFIRMED. Further, all other findings of the Hearing Officer not inconsistent with this opinion are hereby AFFIRMED.

Charles B. Upton  
Charles B. Upton, Commissioner

/s/ Merle H. Stanton  
Merle H. Stanton, Commissioner

152(237)

STANTON, Chairman:

I would like to state some further conclusions of my own with regard to Item #3 of the citation.

The heater and the air conditioner fans were all less than 7 ft. from the floor and the guards had openings larger than 1/2 inch.

Therefore I reluctantly agreed that this was technically a violation although from a practical point of view I believe the chances of an injury are very small. One would have to fall accidentally on top of the air conditioner before it would be possible to run the fingers through the guard. Even then if the fan is four or more inches from the guard the fingers would not reach the fan.

From the testimony I cannot be sure whether the ceiling heater fans were accessible or not. Testimony was given that these heaters had guards on the front side that comply with the standard but the inspector issued a citation because the guards on the back side did not meet the standard. No testimony was given as to the location of the heating element relative to the fan. If the fan is located between the front guard and the heating element then no back guard would be needed, because the fan would be inaccessible without a guard on that side.

I therefore conclude that the standard is incomplete or that our interpretation of the standard is too narrow and does not consider its practical application.

  
H. L. Stowers, Chairman

Dated: March 2, 1976  
Frankfort, Kentucky

DECISION NO. 237

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

Commissioner of Labor of Kentucky (Messenger Service)  
Attention: Honorable Michael D. Ragland  
Executive Director for  
Occupational Safety and Health

Public Service Commission of Kentucky (Messenger Service)  
24th Floor, Capital Plaza Tower  
Frankfort, Kentucky  
Attention: Richard D. Heman, Jr., Secretary

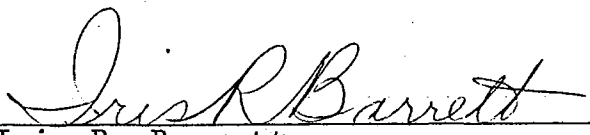
Public Service Commission of Kentucky (Messenger Service)  
24th Floor, Capital Plaza Tower  
Frankfort, Kentucky  
Attention: A. F. Humphries  
Director of Engineering

The Honorable Morris E. Burton (First Class Mail)  
Attorney at Law  
326 West Main Street  
Frankfort, Kentucky 40601

The Honorable William D. Lambert (Certified Mail #456134)  
OGDEN, ROBERTSON & MARSHALL  
Attorneys at Law  
1200 Riverfront Plaza  
Louisville, Kentucky 40202

Mr. A. B. Vimont (Certified Mail #456135)  
System Safety Director  
Kentucky Utilities Company  
120 South Limestone Street  
Lexington, Kentucky 40507

This 2nd day of March, 1976.

  
\_\_\_\_\_  
Iris R. Barrett  
Executive Director



JULIAN M. CARROLL

GOVERNOR

IRIS R. BARRETT  
EXECUTIVE DIRECTOR

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

CAPITAL PLAZA TOWER

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

October 29, 1975

H. L. STOWERS  
CHAIRMAN

MERLE H. STANTON  
MEMBER

CHARLES B. UPTON  
MEMBER

KOSHRC # 152

PUBLIC SERVICE COMMISSION OF  
KENTUCKY (For and On Behalf of  
Commissioner of Labor)

COMPLAINANT

VS.

KENTUCKY UTILITIES COMPANY

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.

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

Commissioner of Labor  
Commonwealth of Kentucky  
Attention: Honorable Michael D. Ragland  
Executive Director for  
Occupational Safety and Health

Public Service Commission of Kentucky  
24th Floor - Capital Plaza Tower  
Frankfort, Kentucky 40601  
Attention: Richard D. Heman, Jr., Secretary


Public Service Commission of Kentucky  
24th Floor - Capital Plaza Tower  
Frankfort, Kentucky 40601  
Attention: A. F. Humphries  
Director of Engineering

The Honorable Morris E. Burton (Certified Mail #456477)  
Attorney at Law  
326 West Main Street  
Frankfort, Kentucky 40601

The Honorable William D. Lambert (Certified Mail #456478)  
OGDEN, ROBERTSON & MARSHALL  
Attorneys at Law  
1200 Riverfront Plaza  
Louisville, Kentucky 40202

Mr. A. B. Vimont (Certified Mail #456479)  
System Safety Director  
Kentucky Utilities Company  
120 South Limestone Street  
Lexington, Kentucky 40507

This 29th day of October, 1975.

  
Iris R. Barrett  
Executive Director

KENTUCKY OCCUPATIONAL SAFETY  
AND HEALTH REVIEW COMMISSION

KOSHRC No. 152

PUBLIC SERVICE COMMISSION OF  
KENTUCKY (For and On Behalf of  
Commissioner of Labor)

COMPLAINANT

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

KENTUCKY UTILITIES COMPANY

RESPONDENT

\* \* \* \* \*

Hon. Morris E. Burton, Attorney, 326 West Main Street, Frankfort, Kentucky,  
Attorney for Complainant.

Hon. William Lambert, Attorney, 1200 One Riverfront Plaza, Louisville,  
Kentucky 40202, Attorney for Respondent.

FOWLER - Hearing Officer

\* \* \* \* \*

An inspection was made on April 25, 1975, by the Public Service Commission of Kentucky for and on behalf of the Commissioner of Labor of the Commonwealth of Kentucky, Division of Occupational Safety and Health, at a place of employment located at 205 West Clinton Avenue, Georgetown, Kentucky, and on the basis of that inspection it was alleged in the Citation issued May 2, 1975, that Respondent violated the provisions of KRS Chapter 338 (Kentucky Occupational Safety and Health Act of 1972) in the following respects, which were alleged to be other than a serious violation:

There were five (5) items listed in the Citation issued against the Respondent and two (2) of those items are being protested and contested, namely,

Items No. 3 and Item No. 4.

Item No. 3 alleged the violation of 29 CFR 1910.212(a)(5), a description of the alleged violation being as follows:

"The Employer failed to guard fan blades less than seven (7) feet from the floor with guard having openings no larger than one-half (1/2) inch exposing employees to hazards of rotating blades on:

- A. Fan for Carrier Air Conditioner, located outside of of basement entrance.
- B. Fan on ceiling heater in Office at warehouse.
- C. Fan on ceiling heater at warehouse restroom."

Item No. 4 alleged the violation of 29 CFR 1910.309(a), being a violation of the National Electrical Code, 250-45(d), a description of the alleged violation being as follows:

"Employer failed to provide that exposed noncurrent carrying metal parts of cord, and plug, connected equipment, which are liable to become energized shall be grounded. For example: Westinghouse water cooler motor located in warehouse office is not effectively grounded."

The abatement date for both contested violations was to be without delay but no later than May 19, 1975.

The procedural pertinent information and dates are as follows:

1. Inspection of the premises mentioned above - April 25, 1975.
2. Citations issued May 2, 1975, listing two (2) violations, namely, Item No. 3 and Item No. 4 as the items contested.
3. There was no proposed penalty for either of the aforesaid Items No. 3 or No. 4, and the abatement date for both Items No. 3 and No. 4 was without delay, but no later than May 19, 1975.
4. Notice of Contest was received as to both Items on May 12, 1975.
5. Notice of Contest with copy of Citations and proposed penalty transmitted to KOSH Review Commission on May 16, 1975.
6. Notice of Receipt of Contest mailed May 16, 1975.
7. Certification of Employer Form received May 21, 1975.
8. Complaint received May 29, 1975. Answer filed June 25, 1975.
9. Assigned to Hearing Officer August 15, 1975; hearing scheduled and held August 26, 1975, at 1:00 P.M., at Capital Plaza Tower, G-1, Frankfort, Kentucky.

The aforesaid hearing was held under the provisions of KRS 338.071(4), one of the provisions 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 procedural aspects of the hearings. Under the provisions of KRS 338.081, hearing was authorized by provisions of said Chapter and such may be conducted by a Hearing Officer appointed by the Review Commission to serve in its place. After hearing and appeal, the Review Commission may sustain, modify or dismiss a Citation or penalty.



Following the testimony taken, the parties agreed to submit Briefs within 15 days of Notice of Receipt of the Transcript of the Evidence by the Hearing Officer. Due notice was sent of the Receipt of the Transcript on September 29, 1975, and the parties were ordered to have Briefs filed not more than 15 days from said date. On October 15, 1975, within the time limits set by the Hearing Officer by subsequent order to file Briefs, the Respondent filed his Brief with the Hearing Officer. The Complainant did not file a Brief.

After hearing the testimony of the witnesses, and after having examined the printed evidence and considered same, together with the Stipulations and Representations of the Parties, and the Brief of the Respondent filed herein, it is concluded that substantial evidence on the record considered as a whole supports the following findings of fact.

#### FINDINGS OF FACT

1. Your Hearing Officer finds no violation as to Item Number 3 for the following reasons:

Proof was introduced indicating that the fan blades of the Carrier Air Conditioner, located outside the building at the basement entrance and the fan on the ceiling heaters in the office at the warehouse and in the restroom at the warehouse, were not guarded in accordance with existing standards. The fact that no violation is found is because there was no hazard created by the existence of any of these items, insofar as employees of the Respondent Company were concerned. The Air Conditioner, a photograph of which is contained in the record,

was located in the yard which was not a working area and in which employees were not required to be around and were not required at any time to either turn on or off the Air Conditioner or to service it in any fashion. It is true that employees went by the Air Conditioner, using a door which was nearby to the basement, but for an employee to become injured as a result of this Air Conditioner would almost have to be a voluntary act in putting one's finger into the grill opening without reason, and certainly not in the furtherance of any employment in the area. There appeared to be no reason for any employee to be near the Air Conditioner and it would have taken a deliberate act to be injured by it.

The same non-violation is seen by your Hearing Officer insofar as the fans on the ceiling heaters in both locations mentioned because the ceiling heaters are practically inaccessible. The front of the ceiling heaters had a guard on it which complied with the standard but the back of the fan had a cover with openings in access of those permitted. The photographs introduced show one of the heaters over a filing cabinet and another over a hot-water heater which are total inaccessible and a person, an employee, would have to deliberately put their hand or person behind the fan in order to become injured by reason of it. The fans were thermostatically operated and there was no occasion for any employee to be near them and no necessity that they be manually operated in any fashion. None of the Items mentioned were in an area considered a working area and none were in operation at the time that the inspection took place.

There is, therefore, no violation found as to Item Number 3.

2. The Complainant carried the burden of proof insofar as the Westinghouse water cooler, located in the warehouse offices concerned, and it is found as a matter of fact that said water cooler was not properly grounded in accordance with the standards set forth in the code.

No penalties were assessed in either of the aforementioned alleged violations and, therefore, no penalty is hereby imposed.

CONCLUSIONS OF LAW

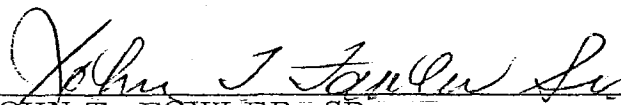
The Complainant has by the burden of proof, proven a violation of Item Number 4, insofar as the water cooler is concerned, and Item Number 4 is considered a violation.

The Complainant has failed to carry the burden of proof as to Item Number 3, and Item Number 3 is not considered a violation. The law and regulations support the no-penalty provision of the Citation and the recommendation made were just and due consideration was given to the Respondent in both charges.

RECOMMENDED ORDER

IT IS ORDERED that Item Number 3 and the abatement date set therein, is hereby vacated and Item Number 4 and the no-penalty Citation provision is sustained, and the abatement period shall be reset for 30 days from the entry of this Order.

DATED: October 29, 1975  
Frankfort, Kentucky

  
JOHN T. FOWLER, SR.  
Hearing Officer - KOSHRC

DECISION NO. 185