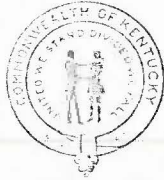


Shapiro



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352 (520)

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

JULIAN M. CARROLL
GOVERNOR

REVIEW COMMISSION

MERLE H. STANTON
CHAIRMAN

IRIS R. BARRETT
EXECUTIVE DIRECTOR

104 BRIDGE ST.
FRANKFORT, KENTUCKY 40601
PHONE (502) 564-6892

CHARLES B. UPTON
MEMBER

JOHN C. ROBERTS
MEMBER

*KOSHRC
Decision +
Order No. 520*

January 16, 1978

KOSHRC #352

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

GENESCO, INCORPORATED

RESPONDENT

DECISION AND ORDER OF
REVIEW COMMISSION

Before STANTON, Chairman; UPTON, Commissioner.

STANTON, Chairman:

A Recommended Order of Hearing Officer Paul Shapiro, issued under date of October 26, 1977, is presently before this Commission for review, pursuant to a Petition for Discretionary Review filed by the Respondent.

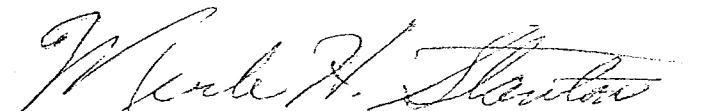
One skiver, one sole cementer, and approximately one half of the 250 sewing machines at the Respondent's Danville plant were cited for unguarded or improperly guarded belts and pulleys. The Hearing Officer has sustained the citation with a reduced penalty of \$43.00, basing his order upon this Commission's decision in Commissioner of Labor v. Blue Grass Industries, Inc., KOSHRC #105.

The issue in the case relied upon by the Hearing Officer was fundamentally the same as that presented here. This Commission reaffirms its decision in Commissioner of Labor v. Blue Grass Industries, Inc., KOSHRC #105, and affirms the Hearing Officer's decision in the present case.

The Complainant filed a motion with this Commission to strike a news article submitted by the Respondent as a supplement to its Petition for Review. The information was not relevant to

the citation in contest and has not been considered as part of the record on review, therefore Complainant's motion to strike is hereby GRANTED.

Accordingly IT IS ORDERED by this Commission that the decision of the Hearing Officer sustaining the citation against the Respondent and imposing a penalty of \$43.00 is hereby AFFIRMED. Abatement shall be made no later than 60 days from the date of this order. All other findings of the Hearing Officer not inconsistent with this decision are hereby AFFIRMED.


Merle H. Stanton, Chairman

/s/ Charles B. Upton
Charles B. Upton, Commissioner

DATED: January 16, 1978
Frankfort, Kentucky

DECISION NO. 520

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

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

Honorable Kenneth E. Hollis (Messenger Service)
General Counsel
Department of Labor
Frankfort, Kentucky 40601
Attention: Frederick G. Huggins
Assistant Counsel

Honorable M. D. Darnall, III (Certified Mail #783004)
Associate Corporate Counsel
Genesco Incorporated
P. O. Box 941
Nashville, Tennessee 37202

Genesco Incorporated (First Class Mail)
Hustonville Road
Danville, Kentucky 40422

This 16th day of January, 1978.



Iris R. Barrett
Executive Director

Mague



352 (782)

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

104 BRIDGE ST.

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

October 26, 1977

JULIAN M. CARROLL
GOVERNOR

IRIS R. BARRETT
EXECUTIVE DIRECTOR

*KOSHRC
Decision +
Order No. 482*

MERLE H. STANTON
CHAIRMAN

CHARLES B. UPTON
MEMBER

John C. Roberts
MEMBER

KOSHRC # 352

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

GENESCO, INCORPORATED

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. Statements in opposition to petition for discretionary review may be filed during review period, but must be received by the Commission on or before the 35th day from date of issuance of the recommended order.

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 40 days of the date of this order, on its own order, or the granting of a petition for discretionary review, 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 directed 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 (Messenger Service)
Commonwealth of Kentucky
Frankfort, Kentucky 40601
Attention: Honorable Michael D. Ragland
Executive Director for
Occupational Safety & Health

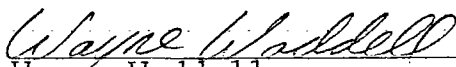
Honorable Kenneth E. Hollis (Messenger Service)
General Counsel
Department of Labor
Frankfort, Kentucky 40601
Attention: Frederick G. Huggins
Assistant Counsel

Honorable M. D. Darnall, III (Certified Mail #240835)
Associate Corporate Counsel
Genesco Incorporated
P. O. Box 941
Nashville, Tennessee 37202

Mr. Jim Hale, Mgr., Corporate Safety (First Class Mail)
Genesco Incorporated
Nashville, Tennessee 37202

Genesco Incorporated (First Class Mail)
Hustonville Road
Danville, Kentucky 40422

This 26th day of October, 1977.


Wayne Waddell
Counsel
KOSH REVIEW COMMISSION

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION
KOSHRC #352

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDED DECISION

GENESCO, INCORPORATED

RESPONDENT

STATEMENT OF THE CASE

This matter arises out of a citation issued against Genesco, Incorporated, hereinafter referred to as "Genesco", by the Commissioner of Labor, hereinafter referred to as the "Commissioner", for violation of Kentucky Occupational Safety and Health Act, hereinafter referred to as the "Act".

On January 17, 1977, a Compliance Officer for the Commissioner made an inspection of Genesco's manufacturing plant in Danville. As a result of that inspection, the Commissioner issued a citation against Genesco on February 14, 1977, charging Genesco with 17 nonserious violations of the Act, and proposing a penalty therefor of \$184.00.

Genesco, on March 7, 1977, and within 15 working days from receipt of the citation, filed a notice with the Commissioner contesting the citation. Notice of the contest was transmitted to this Review Commission on March 14, 1977, and notice of receipt of the contest was mailed by this Review Commission to Genesco on the same date. The Commissioner then filed its Complaint on March 28, 1977, and the Respondent its Answer on April 19, 1977. By separate notices dated April 25, 1977, this matter was assigned to a Hearing Officer and scheduled for hearing.

The Commissioner on April 26, 1977, filed a motion for Judgment on the pleadings on the grounds that the Answer admitted the allegation contained in paragraph 8 of the Complaint that the penalties proposed by the Commissioner were in accordance with the Compliance Officer's manual and that the abatement dates were reasonable under the circumstances. By order dated April 28, 1977, the motion was overruled.

The hearing was held in Frankfort on May 12, 1977, pursuant to KRS 338.070(4). That section of the statute authorizes this Review Commission to rule on appeals from citations, notations and variances to the provisions of the Act, and to adopt and promulgate rules and regulations concerning the conduct of those hearings. KRS 338.081 further authorizes this Review Commission to appoint Hearing Officers to conduct its hearings and represent it in this manner. The decisions of Hearing Officers are subject to review by the Review Commission on appeal timely filed by either party or upon its own motion.

The standards, of 29 CFR 1910, (as adopted by 803 KAR 2:020) allegedly violated, and the description of the alleged violations are as follows:

1910.219(d)(1)	Pulleys, horizontal belts, and
1910.219(e)(1)(i)	vertical belts less than seven
1910.219(e)(3)(i)	(7) feet from the floor on the
	following machines in the
	following locations were not
	adequately guarded
	(h) On the New York lining cementer
	in the sole leather area, . . .
	(m) On the skiver in the fitting
	department,
	(n) On the sewing machines in the
	fitting department.

There were 17 other machines also cited as being in violation of the same standards. For violation of these standards a penalty of \$96.00 was proposed. The penalty was also contested.

Upon a review of the pleadings, testimony and evidence herein, the following Findings of Fact, Conclusions of Law and Recommended Decision are hereby made.

FINDINGS OF FACT

Genesco manufactures women's footwear. The company operates 90 plants throughout the nation, including its plant in Danville. The Danville plant is part of the company's General Shoe Division, in which there are a total of 18 plants.

As a part of its manufacturing operations, Genesco uses sewing machines, skivers and sole cementers. There are 250 sewing machines, one sole cementer and apparently one skiver in the Danville plant. These machines are set up on tables four feet wide by two feet deep. The tables are arranged in rows two tables wide. Operators sit in front of their machines with their legs beneath their table.

The sewing machines are used to stitch the different parts of the shoe together. To operate a sewing machine, an operator depresses a foot pedal on the floor beneath the table, and then feeds the material being sewn into the machine with both hands. Thus, both hands are above the machine when it is running. The machines only run while the foot pedal is depressed. When the pedal is released, the machine stops immediately.

The skiver is a machine which bevels the edge of the different parts of the shoe, so that when they are sewn together they form a smooth surface. Like the sewing machines, it is operated by depressing a foot pedal. When the pedal is released the machine stops. The operators used both hands to feed materials into the machine, so that both hands are also above the table while the machine is running.

The sole cementer is used to apply cement to the soles of the shoes being manufactured. It resembles the wringer on an old fashion clothes washer. The soles are inserted into the right side of the machine with one hand, and, after they are coated with cement, they emerge from the left side and are removed with the other hand. Unlike the other two machines,

the sole cementer is operated by an on-off electric switch, so that once turned on it operates automatically.

The sewing machines and the skiver are powered by motors beneath the tables. The motors are connected to the machines by a belt running between a pulley on the machine and a pulley on the motor. On approximately one-half of the sewing machines, the belts and pulleys beneath the tables were guarded. Of the remaining machines, approximately 35% were inadequately guarded, and 15% were completely unguarded. Thus, the ingoing nip point, where the belt made initial contact with the pulley, was exposed on approximately one-half of the sewing machines.

The belts and pulleys beneath the skiver were also partially guarded. But on these too, the ingoing nip point on the machines was exposed.

The exposed nip points on all the sewing machines and the skiver were approximately 18 inches above the floor when measured vertically and, 18 inches back from the table, when measured on a horizontal plane. If drawn into the nip points while the machines are running, an operator's fingers or other parts of the operator's body could be severely injured.

The motor on the sole cementer was above the table, but behind the machine. The belt and pulleys on the machine were unguarded exposing the ingoing nip point. Since the belts and pulleys are behind the machine, the exposed nip points are approximately 24 inches back from the front of the table on which the machine sits.

In proposing a penalty of \$96.00 for the violation cited, the Compliance Officer followed guidelines set forth in a compliance manual furnished to him by the Commissioner. These guidelines are supposed to be followed by all Compliance Officers to ensure uniformity in fixing penalties and they represent the policy of the Commissioner. Under these guidelines, an unadjusted penalty is first calculated for each alleged nonserious violation. The unadjusted penalty is based on the severity of the injuries likely to result from the violation, the likelihood

of such an injury occurring, and the extent to which the standard has been violated. Unadjusted penalties can range from \$125.00 minimum to \$425.00 maximum. In this case, the unadjusted penalty was fixed at \$275.00.

The unadjusted penalty is then reduced by applying three factors, namely: the good faith evidenced by the company in complying with the Act, the history of the company in complying with the Act, and the size of the company in terms of the total number of its employees. The maximum credit allowed for good faith is 20% of the unadjusted penalty and the maximum allowed for history is 20%. In this case, Genesco was allowed the full credit of 20% for good faith, but since the company had been inspected on prior occasions, Genesco was allowed only 10% for history. No credit was allowed for size because of the large number of workers employed by Genesco. When applied to the unadjusted penalties, these factors reduced the penalty to \$192.00.

All adjusted penalties for nonserious violations are then allowed a 50% abatement credit. This credit is given in anticipation of the employer abating the violation within the time permitted by the citation. In this case, it reduced the penalty to \$96.00.

Genesco's Corporate Safety Director and its Manager of Facilities Planning and Safety Compliance testified that they had 8-1/2 years and 16 years experience respectively with the company and the type of machines involved here. They both stated that, in their experience, there had never been an accident resulting from exposed nip points on these machines.

The Corporate Safety Director further testified that he had made an investigation of the company records, and he had found that since 1967 the company had compiled 3-1/2 million sewing hours without any lost time due to such accidents, that from January through March of this year the company had accumulated 4-1/2 million man hours without such an

injury, and that from July, 1974 to March, 1977, the company had compiled 20.2 million hours in its General Shoe Division without such an accident.

The company witnesses also testified that the company had been inspected before at its Danville plant and had not been cited for these violations. However, there was no showing that the same conditions prevailed in the plant at that time, and in fact, the evidence showed that machinery was often moved from one plant to another.

CONCLUSIONS OF LAW

29 CFR 1910.219, provides in part as follows:

(d) Pulley - (1) Guarding. Pulleys, any parts of which are seven (7) feet or less from the floor or working platform, shall be guarded

(e) Belts, rope and chain drives - (1) Horizontal belts and ropes. (i) Where both runs of horizontal belts are seven (7) feet or less from the floor level, the guard shall extend to at least fifteen (15) inches above the belt or to a standard height (see Table 0-12), except that where both runs of a horizontal belt are 42 inches or less from the floor, the belt shall be fully enclosed

(3) Vertical and inclined belts. (i) Vertical and inclined belts shall be enclosed by a guard

All of the vertical belts involved here were less than seven (7) feet above the floor, all of the horizontal belts were less than 42 inches above the floor, and all of the belts and pulleys were unguarded or only partially guarded. They, therefore, were in violation of the standard.

Genesco contends that the exposed nip points were so far away from the operators of the machines that they presented no danger to the operators. In support of their contention they rely upon the statistics which indicate there were no lost time accidents over a period of years resulting from contact with the nip point. Genesco cites the case of Secretary of Labor vs. Van Rualte Company, Inc, OSHRC #507, wherein the Federal Review Commission in a similar situation declared the violation to be "de minimus" and therefore, one that need not be abated.

This Review Commission, however, has specifically rejected the "de minimus" concept. Instead it addresses itself to whether there has been a violation of a standard and, if so, whether the violation presents a hazard of injury to employees.

An almost identical question to that presented here, was presented to this Review Commission in Commissioner of Labor vs. Blue Grass Industries, Inc., KOSHRC Docket No. 105. There the Review Commission sustained a citation alleging a violation of the same standards due to exposed nip points on belts and pulleys attached to sewing machines used in the manufacturing of clothing. The Review Commission reached this decision even though it found that the exposure "was very slight".

In the instant case, the exposure was also slight and the likelihood of injury remote, as evidenced by the company's safety record. However, slight, the likelihood of injury still remained and, thus, there was a violation of the standard.

Because the likelihood of injury was slight, however, the unadjusted penalty proposed by the Compliance Officer of \$275.00 appears excessive. In the Blue Grass decision cited above, the penalty proposed there for the same violation was \$37.00. This indicates that the unadjusted penalty proposed in that case was \$125.00, the minimum allowed under the Commissioner's guidelines. If the unadjusted penalty were reduced to \$125.00 in this case, the proposed penalty, after applying the same adjustment factors of good faith and history and the abatement credit, would be \$43.00. Such a penalty would be appropriate under the circumstances.

RECOMMENDED DECISION

Upon the basis of the foregoing Findings of Fact, Conclusions of Law, and upon the entire record,

IT IS HEREBY ORDERED

That the citation issued February 14, 1977, alleging a violation of 29 CFR 1910.219(d)(1), 29 CFR 1910.219(e)(1)(i), and 29 CFR 1910.219(e)(3)(i)

(as adopted by 803 KAR 2:020) and proposing a penalty therefor of \$96.00 is hereby sustained, except that the penalty is reduced to \$43.00.

IT IS FURTHER ORDERED, that the violation must be abated and the penalty paid without delay, but no later than 60 days from the date hereof.



PAUL SHAPIRO
HEARING OFFICER
KOSHR

Dated: October 26, 1977
Frankfort, Kentucky

DECISION NO. 482