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KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

104 BRIDGE ST.

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

January 4, 1978

JULIAN M. CARROLL  
GOVERNOR

IRIS R. BARRETT  
EXECUTIVE DIRECTOR

*KOSHRC  
Decision #  
Order No. 511*

MERLE H. STANTON  
CHAIRMAN

CHARLES B. UPTON  
MEMBER

JOHN C. ROBERTS  
MEMBER

KOSHRC #359

COMMISSIONER OF LABOR  
COMMONWEALTH OF KENTUCKY

VS.

BLUE GRASS INDUSTRIES, INC.

RESPONDENT

DECISION AND ORDER OF  
REVIEW COMMISSION

Before STANTON, Chairman; UPTON and ROBERTS, Commissioners

STANTON, CHAIRMAN, FOR THE MAJORITY:

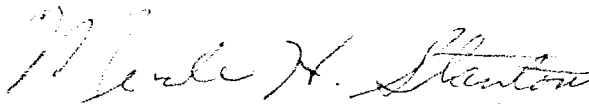
A Recommended Order of Hearing Officer Paul Shapiro, issued under date of October 7, 1977, is presently before this Commission for review, pursuant to a Petition for Discretionary Review filed by the Respondent.

Many of the sewing machines at the Respondent's Carlisle plant were cited for unguarded belts and pulleys. The Hearing Officer has sustained the citation and penalty based upon this Commission decision in Commissioner of Labor vs. Blue Grass Industries, Inc., KOSHRC #105.

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

Finding no error in the application of the law to the facts herein, and the evidence appearing to adequately support the findings and conclusions of the Hearing Officer, it is the ORDER of a majority of this Commission that the Recommended

Recommended Order of the Hearing Officer be and it is hereby  
AFFIRMED. All findings of the Hearing Officer not inconsistent  
with this decision are likewise AFFIRMED.

  
Merle H. Stanton, Chairman

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

ROBERTS, COMMISSIONER, DISSENTING:

I believe that the citation against the Respondent  
should be dismissed. Although the machines may not be in complete  
compliance with the guarding requirements outlined in the standards,  
the hazard to the employees is so remote that no violation exists.

/s/ John C. Roberts  
John C. Roberts, Commissioner

Dated: January 4, 1978  
Frankfort, Kentucky

DECISION NO. 511

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

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

Honorable Billy G. Hopkins (Certified Mail #240823)  
Attorney at Law  
109 Main Street  
Carlisle, Ky. 40311

Blue Grass Industries, Inc. (First Class Mail)  
Highway 36  
Carlisle, Ky. 40311

This 4th day of January, 1978.

  
Iris R. Barrett  
Executive Director

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KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

104 BRIDGE ST.

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

October 7, 1977

JULIAN M. CARROLL  
GOVERNOR

IRIS R. BARRETT  
EXECUTIVE DIRECTOR

MERLE H. STANTON  
CHAIRMAN

CHARLES B. UPTON  
MEMBER

John C. Roberts  
MEMBER

KOSHRC # 359

COMMISSIONER OF LABOR  
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

BLUE GRASS INDUSTRIES, 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. 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

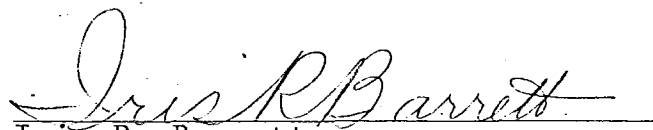
✓ Honorable Kenneth E. Hollis (Messenger Service)  
General Counsel  
Department of Labor  
Frankfort, Kentucky 40601  
Attention: Frederick G. Huggins  
Assistant Counsel

✓ Hon. Billy G. Hopkins (Certified Mail #240728)  
Attorney at Law  
109 Main Street  
Carlisle, Kentucky 40311

✓ Blue Grass Industries, Inc. (First Class Mail)  
Highway 36  
Carlisle, Kentucky 40311

This 7th day of October, 1977.

✓ Otis R.  
✓ 3-Comms  
✓ H.O's

  
Iris R. Barrett  
Executive Director

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH  
REVIEW COMMISSION  
KOSHRC #359

COMMISSIONER OF LABOR  
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
RECOMMENDED DECISION

BLUE GRASS INDUSTRIES, INC.

RESPONDENT

STATEMENT OF THE CASE

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

On February 15 and 16, 1977, a Compliance Officer made an inspection of Blue Grass's manufacturing plant near Carlisle. As a result of that inspection, the Commissioner issued a citation on March 11, 1977, charging Blue Grass with the nonserious violation of 28 safety standards adopted under the Act, and proposing a total penalty therefor of \$235.00.

Blue Grass on March 28, 1977, and within 15 working days from receipt of the citation, filed a notice with the Commissioner contesting the entire citation. Notice of the contest was transmitted to this Review Commission on March 30, 1977, and notice of receipt of the contest was transmitted by the Review Commission to Blue Grass on March 31, 1977. Thereafter, the Commissioner on April 14, 1977, filed its Complaint and Blue Grass on May 2, 1977, its Answer. By separate notices dated May 3, 1977, this matter was assigned to a Hearing Officer and scheduled for hearing.

The hearing was held in Frankfort on May 26, 1977, pursuant to KRS 338.070(4). That section of the statutes 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.

At the hearing, the parties stipulated and agreed that Blue Grass would withdraw its contest to Items 2 through 28 of the citation, to the Wilcox and Gibbs machines listed under subsections (a), (b), (e) and (f) of Item 1, to the assembly machine and the rope making machine listed under subsection (d) of Item 1, and to all the machines listed under subsections (i), (j), (k), (l), (m) and (n) of Item 1.

The standards (as adopted by 803 KAR 2:020) allegedly violated and in contest here, the description of the alleged violation and the penalty proposed for same, are as follows:

29 CFR 1910.219 (e)(3)(i) and 29 CFR 1910.219 (d)(1)	The following machines had horizontal, vertical or inclined U-Belts and pulleys which were located on the machines less than seven (7) feet from the floor, that were not provided with an adequate guard:	\$67.00
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(Citation lists approximately 300 machines of which only the Singer, Reece Bartacker, Flatlock and Hoffman sewing machines were contested)

Blue Grass has raised four alternative defenses to the citation. The first defense is that the Complaint fails to state a cause of action

upon which relief can be granted. The second defense is that the citation is based on a warrantless search and is, therefore, invalid. The third defense is that there is an action now pending before the Franklin Circuit Court involving the same parties which acts as a bar to this action. The fourth defense is that the conditions complained of do not present a hazard to the employees of Blue Grass and, therefore, there has been no violation of the Act.

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

Blue Grass is a manufacturer of ladies undergarments. On February 15, 1977, William Caywood, a Compliance Safety and Health Officer, employed by the Commissioner, went to Blue Grass's plant in Carlisle for the purpose of making a safety inspection. He presented his credentials to Don Haney, the Company President, and after conducting an opening conference with Mr. Haney began his inspection. The opening conference lasted approximately an hour to an hour and a half. No effort was made to prevent the Compliance Officer from making the inspection, and no demand was made upon him for a search warrant and no warrant was ever issued.

The inspection was completed on February 16, 1977. At the completion of the inspection, the Compliance Officer conducted a closing conference and then left the plant. The closing conference lasted about two and one half hours. Thereafter, the citation was issued based upon the Compliance Officer's observations made during the inspection.

Blue Grass uses approximately 500 sewing machines in its Carlisle plant. These machines are set up on tables placed end to end in rows two tables wide. At the end of each row there is either a thread cabinet,



supervisor's desk or inspection table. Access to beneath each table, except from the front, is effectively barred, either by the other tables or the objects at the end of each row.

The motors used to power the machines are 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. The tables are approximately 3 feet high, and the belts and pulleys on the contested machines are unguarded.

Although, Blue Grass uses several different brands of machines, and although, different machines are set up to perform different stitches, they all are operated in essentially the same manner. To start a machine, the operator depresses a foot pedal on the floor beneath the table, and then feeds the material into the machine with both hands. Thus, both hands of the operator are above the machine while it is being operated. With the exception of the Reece Bartacker, the machines only run while the foot pedal is depressed. When the pedal is released, the machine stops immediately. The Reece Bartacker, however, goes through a 2 to 3 second cycle, and once started it does not stop until the cycle is completed.

Of the 500 machines, 300 were found to be in violation of the standard because the belts and pulleys beneath the tables were unguarded, exposing the nip point where the belt made initial contact with the pulley. The exposed nip point could cause injury to the hands and fingers of any one reaching into it, but it was too small to present a hazard to any other part of the body.

In her normal operating position, an operator cannot reach the exposed nip point with her hands. The only way she can reach it is by getting down on her hands and knees in front of the machine and stretching her arm back to the motor.

The operator's duties are confined solely to the operation of the machine. Maintenance of the machines is taken care of by a maintenance department. Therefore, there is never any reason for an operator to reach into the motor of the machine in the performance of her job.

The operators are mostly women and they are each permitted to bring a sweater and a purse to their machines. When not wearing the sweater, they are instructed to place it over the back of their chair. The purses are either hung on a hook attached to the underside of their table, or, when there is no hook, placed on the floor.

The Compliance Officer proposed a penalty of \$67.00 for the violation of the standard. The penalty was calculated in accordance with policy guidelines contained in a compliance manual furnished to all Compliance Officers by the Commission.

Under these guidelines, an unadjusted penalty is first calculated for each nonserious violations. The unadjusted penalty is based on the likelihood of an injury resulting from the violation, the severity of any injury likely to result, 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 fixed by the Commissioner was \$150.00 and was based on the number of machines involved and the severity of the injury likely to accrue if an operator's fingers were caught between the belt and the pulley at their nip point beneath the machine.

The unadjusted penalty can then be reduced by 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 allowed for good faith is 20% of the unadjusted penalty. However,

because of the high number of standards cited, Blue Grass was allowed only 10%, reducing the penalty to \$135.00.

The maximum allowed for history is also 20%. In this case, Blue Grass had been inspected on a previous occasion and cited for being in violation of the Act. Therefore, under the Commissioner's guidelines, no adjustment was allowed for history.

The size adjustment is based solely on the number of employees. Employers with more than 99 employees received no credit for this factor. In this case, Blue Grass had more than 300 employees and, therefore, did not qualify for any reduction for size.

The adjusted penalties for nonserious violations are all given an abatement credit of 50%. This credit is given in anticipation of the employer abating the violation within the time allowed by the citation. After applying the abatement credit to the adjusted penalty of \$135.00, the Commissioner arrived at his proposed penalty of \$67.00.

#### CONCLUSIONS OF LAW

The first defense raised by Blue Grass is that the Complaint fails to state a cause of action upon which relief may be granted. The Act, does not prescribe the form and contents of a Complaint and, therefore, pursuant to Section 3 of the Rules of Procedure of this Commission, which in turn adopts the Kentucky Rules of Civil Procedure, the sufficiency of the Complaint is determined under Civil Rule 8.01. That rule provides that the Complaint to be sufficient must give the opposing party fair notice of the essential nature of the claim and the type of relief the claimant deems himself entitled to. Lee v. Stamper, 300 SW2d 251 (Ky, 1957).

In the instant case, the Complaint sets forth the facts upon which the contested citation was based, describes clearly the machinery involved, and makes a clear demand for relief. It therefore, satisfies the requirements of the Civil Rules in stating a claim.

The second defense raised by Blue Grass is that the citation is based on a warrantless search which makes it invalid. KRS 338.101(1)(a) vests in the Commissioner the right to enter any place of employment without notice during regular working hours, and at other reasonable times, for the purpose of conducting an inspection. Although a warrant may be necessary if entry is refused, it is clear from the Act that when a employer voluntarily submits to an inspection, he waives the right to demand a search warrant.

Here, the Compliance Officer was permitted to make the inspection after presenting his credentials to the President of the Company. No demand was made for a warrant and, therefore, the Compliance Officer had the right to conduct the inspection.

The third defense raised is that there is presently pending in the Franklin Circuit Court an appeal by Blue Grass of a decision by this Review Commission sustaining an earlier citation. In that action styled Commissioner of Labor vs. Blue Grass Industries, Inc., KOSHRC Docket No. 105, one of the items contested involved the same type of machinery in contest here. That action, however, involved different machines at a different plant and therefore, though still pending, does not act as a bar to this action.

The final defense raised involves the validity of the citation itself. 29 CFR 1910.219, provides in part as follows:

(d) Pulleys - (1) Guarding. Pulleys any parts of which are seven (7) feet or less from the floor or working platform, shall be guarded in accordance with standards specified in paragraphs (n) and (o) of this section . . . .

(e) Belt rope and chain drives - (3) Vertical and inclined belts (i) Vertical and inclined belts shall be enclosed by a guard conforming to standards specified in paragraphs (n) and (o) of this section.

There is no question that the belts and pulleys on the sewing machines in contest here failed to conform to the standard. The vertical belts and pulleys were less than 7 feet from the floor, were unguarded, and the pinch points, where the belts made initial contact with pulley, were exposed. The question remains, though, whether the exposed pinch points presented a hazard to employees of Blue Grass.

Blue Grass contends that the likelihood of injury from the exposed pinch points, because of their locations beneath the sewing machines, was remote. Blue Grass relies upon Norrock Shoe Co., CCH-OSHD ¶ 19283 (1975), Southwest Filter Co. - CCH-OSHD ¶ 20,193 (1975) and Borders Electronics, Inc., CCH-OSHD ¶ 20,194 (1975), as authority for dismissing the citation on this ground. In each of those cases, the Federal Review Commission vacated a citation for failing to guard vertical belts when it found that the possibility of an accident resulting from the unguarded belts was remote.

The Compliance Officer conceded in his testimony that the likelihood of an injury from any one machine in this case was remote. However, he pointed out that since most of the operators were women who could be expected to carry purses to their machines, there was a possibility that in reaching for a purse, an operator might put her hands into the belt and pulley while inadvertently starting the machine. In such a case there would be a real likelihood of injury. The Compliance Officer was also of the opinion that, because of the large number of machines used by Blue Grass, the likelihood of this happening was significantly increased.

This precise factual situation was presented to the Review Commission in the earlier action between the parties cited above, which Blue Grass sought to rely upon as a bar to this action. There the Commission sustained the citation holding as follows:

Though the exposure . . . . was very slight, it was present on the day of the inspection Respondent's witness stated that it would be a "freak accident", but that it is possible that an employee could be harmed in the manner suggested by Complainant by the pulley and belt of the layout machine. By the same token, it was said by Respondent's witness that there is a possibility that someone who gets down on the floor could reach into the nip point of the belts and pulleys of the sewing machines. Since there is no enforced rule that purses are to be brought into the sewing machine (area), the possible exposure is quite evident here. (Emphasis added)

This earlier decision, unless overruled by the Circuit Court, establishes a precedent in this case. On the basis of this precedent the citation should be sustained. Further, the proposed penalty, in view of the hazard presented, not only by the contested machines, but the others indicated in the citation, was 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 March 11, 1977, and the penalty proposed for same be, and is hereby, sustained.

IT IS FURTHER ORDERED:

That the violation shall be abated without delay, but no later than 60 days from the date hereof.



PAUL SHAPIRO  
HEARING OFFICER  
KOSHRC

Dated: October 7, 1977  
Frankfort, Kentucky

DECISION NO. 479