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KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

JULIAN M. CARROLL
GOVERNOR

REVIEW COMMISSION

104 BRIDGE ST.

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

MERLE H. STANTON
CHAIRMAN

CHARLES B. UPTON
MEMBER

JOHN C. ROBERTS
MEMBER

IRIS R. BARRETT
EXECUTIVE DIRECTOR

January 4, 1978

KOSHRC #368

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

WEST KENTUCKY 2-WAY RADIO, INC.

RESPONDENT

DECISION AND ORDER OF
REVIEW COMMISSION

Before STANTON, Chairman; UPTON and ROBERTS, Commissioners.

PER CURIAM:

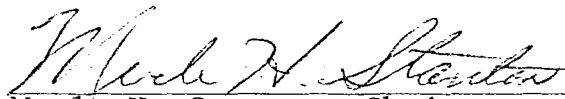
The Recommended Order of Hearing Officer Paul Shapiro, issued under date of October 10, 1977, is presently before this Commission for review, pursuant to an Order of Direction for Review.

The Respondent was cited for an alleged violation of 29 CFR 1910.151(b) (as adopted by 803 KAR 2:020). Hearing Officer Shapiro, after reviewing the evidence pleadings and testimony, affirmed the citation.

The Kentucky Regulation, 803 KAR 2:020, adopts 29 CFR part 1910 with certain modifications. Section 1910.151(b), as applicable in Kentucky, is different from the federal standard. The regulation read into the record is 1910.151(c) in Kentucky. The evidence introduced pertains to 1910.151(c) and does not establish a violation of 1910.151(b).

Due to this improper citation and the lack of proof to establish a violation of the cited standard, we must reverse the Hearing Officer and dismiss the citation against the Respondent.

Therefore it is ORDERED by this Commission that the Hearing Officer's decision insofar as it has affirmed a violation of 29 CFR 1910.151(b) (as adopted by 803 KAR 2:020) is hereby REVERSED, and the citation is VACATED.


Merle H. Stanton, Chairman

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

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

Dated: January 4, 1978
Frankfort, Kentucky

DECISION NO. 513

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

(Messenger Mail)

Honorable Kenneth E. Hollis
General Counsel
Department of Labor
Frankfort, Kentucky 40602

(Messenger Mail)

Attention: Hon. Frederick G. Huggins
Deputy General Counsel

Mr. David W. Warren, Gen'l. Mgr.
West Kentucky 2-Way Radio, Inc.
Post Office Box 351
Central City, Kentucky 42330

(Certified Mail #240821)

This 4th day of January, 1978.



Iris R. Barrett
Executive Director



KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

JULIAN M. CARROLL
GOVERNOR

IRIS R. BARRETT
EXECUTIVE DIRECTOR

*KOSHRC
Decision &
Order No. 480*

REVIEW COMMISSION

104 BRIDGE ST.

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

October 10, 1977

MERLE H. STANTON
CHAIRMAN

CHARLES B. UPTON
MEMBER

John C. Roberts
MEMBER

KOSHRC # 368

DEPARTMENT OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

WEST KENTUCKY 2-WAY RADIO, 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.

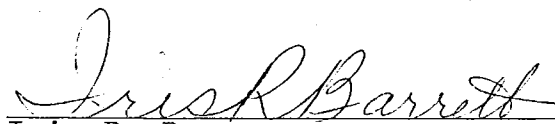
Copy of this Notice and Order has been served by mailing or personal delivery on the following:

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: Hon. Frederick G. Huggins
Deputy General Counsel

Mr. David W. Warren, Gen. Mgr. (Certified Mail #240729)
West Kentucky 2-Way Radio, Inc.
P. O. Box 351
Central City, Kentucky 42330

This 10th day of October, 1977.



Iris R. Barrett
Executive Director

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION
KOSHRC #368

PUBLIC SERVICE COMMISSION
OF KENTUCKY (For and on
behalf of DEPARTMENT OF
LABOR

COMPLAINANT

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

WEST KENTUCKY 2-WAY RADIO, INC.

RESPONDENT

STATEMENT OF THE CASE

This matter arises out of a citation issued against West Kentucky 2-Way Radio, Inc., hereinafter referred to as "Radio", by the Public Service Commission, hereinafter referred to as the "Commission", for violation of the Kentucky Occupational Safety and Health Act, hereinafter referred to as the "Act".

On March 24, 1977, a Compliance Officer for the Commission made an inspection of Radio at its place of business in Central City. As a result of that inspection, the Commission issued a citation against Radio on March 30, 1977, charging Radio with nine nonserious violations of the Act, but proposing no penalty therefor.

On April 20, 1977, and within 15 working days from receipt of the citation, Radio filed a notice with the Commission contesting the citation. Notice of the contest was transmitted to this Review Commission on April 22, 1977, and notice of receipt of the contest was mailed to Radio on the same day. The Commission then filed its Complaint on May 11, 1977, and Radio its Answer on May 25, 1977. By separate notices dated May 27, 1977, this matter was assigned to a Hearing Officer and scheduled for hearing.

The hearing was held in Madisonville on June 16, 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.

Prior to and during the hearing, the Commission was represented by its staff attorney. Thereafter, pursuant to Executive Order 77-573 assigning all active cases under the Act previously handled by the Commission to the Commissioner of Labor, upon motion by attorneys for the Department of Labor they were substituted as counsel for the Commission, by Order dated July 21, 1977.

The standard alleged to have been violated (as adopted by 803 KAR 2:030, pursuant to KRS 338.061) and the description of the alleged violation, are as follows:

29 CFR 1910.151(b) Failed to provide that in the absence of an infirmary, clinic, or hospital in near proximity to the workplace which is used for the treatment of all injured employees, a person or persons shall be adequately trained to render first-aid. First-aid supplies approved by the consulting physician shall be readily available, in that no one at this establishment trained to render first-aid. Part of employees work over the Western Kentucky area; office and reporting center.

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

Radio is engaged in business as a "Motorola Mobile Service Center". It operates under a contract with Motorola to service all Motorola radio communication equipment in the western part of the state and the southern tip of Indiana. Radio has 15 employees consisting of four office workers, seven licensed technicians and four assistants to the technicians. None of the employees have been trained in first-aid in a recognized course of instruction.

Radio's place of business is in Central City. It is conceded by the Commission that the place of business is in close proximity to medical facilities where injured employees can receive emergency treatment.

A large part of Radio's work is done on the premises of Radio customers, by one man sent from the central office. However, when the work involves the installation of heavy equipment, or the installation of several pieces of equipment, crews of two or more are sent. Often the customers premises are not in areas which are in close proximity to medical facilities.

Radio does not install, repair or maintain towers used in conjunction with its customers equipment. Such work is subcontracted out to a tower company.

In 1973 one of Radio's employees was fatally injured as a result of a fall. Since that time, however, the company has reorganized and is under new management. Under the new management the company has had no lost time accidents, and its employees have only suffered minor injuries. Although its employees do some electrical wiring and some minor carpentry, Radio's work is not hazardous.

CONCLUSIONS OF LAW

29 CFR 1910.151(b) provides:

Medical services and first-aid In the absence of an infirmary, clinic or hospital in near proximity to the workplace, which is used for the treatment of

all injured employees, a person or persons shall be adequately trained to render first-aid. First-aid supplies approved by the consulting physician shall be readily available.

The Commission concedes that Radio's place of business in Central City was in "near proximity" to medical facilities available for use by injured employees. Therefore, the only issue involved here is whether the standard applies to employees while they are making service calls in areas not in near proximity to such facilities. The Commission contends that it does, and that the failure to accompany such employees with personnel trained in first-aid, or in the case of service calls made by one man, the failure to train employees making such calls in first-aid, is a violation of the standard.

In Clarkson Construction Co., CCH-OSHD ¶ 16,191 (1973) a workplace was defined as anywhere an employee is required to do work. There the employer had contended that the paved shoulder of a highway, over which the employer had no control, was not a workplace as that term is used throughout the safety standards. In rejecting the contention, the Federal Review Commission pointed out that the employer had required one of its workers to act as a flagman for traffic entering and leaving the jobsite, and had directed the flagman to perform his duties on the shoulder of the highway. Since the employees were required to work there, the shoulder of the highway was a "workplace" within the meaning of the standard involved there.

In the instant case, employees of Radio are required to perform work away from central office. Anyplace they perform that work is also a "workplace" within the meaning of the standard. When such workplaces are not in "near proximity" to medical facilities available to provide treatment to injured employees, first-aid treatment must be available in the form of trained first-aid personnel. The failure to have such personnel is a violation of the standard.

RECOMMENDED DECISION

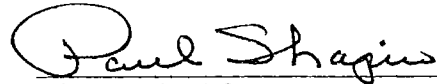
NOW, THEREFORE, upon the basis of the foregoing Findings of Fact,
Conclusions of Law, and upon the entire record,

IT IS HEREBY ORDERED

That the citation issued March 30, 1977, charging a nonserious
violation of 29 CFR 1910.151(b) (as adopted by 803 KAR 2:020) is
hereby affirmed.

IT IS FURTHER ORDERED

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

A handwritten signature in cursive script, reading "Paul Shapiro", is written over a horizontal line.

PAUL SHAPIRO
HEARING OFFICER
KOSHR

DATED: October 10, 1977
Frankfort, Kentucky

DECISION NO. 480