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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

CHARLES B. UPTON  
MEMBER

*KOSHRC  
Decision +  
Order No. 476*

PHONE (502) 564-6892

HERBERT L. STOWERS  
MEMBER

October 6, 1977

KOSHRC # 382

COMMISSIONER OF LABOR  
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

KUEMPEL COMPANY, INC.

RESPONDENT

DECISION AND ORDER OF  
REVIEW COMMISSION

Before STOWERS and UPTON, Commissioners.

STOWERS, Commissioner:

A Recommended Order, granting Complainant's Motion to Dismiss, issued under date of July 15, 1977, is before this Commission for consideration pursuant to an Order of Direction for Review.

Because of some question and confusion regarding whether a timely contest was made in this case, this Commission has made a thorough review of the documents and pleadings in the record.

The initial inspection was conducted April 12, 1977 with a citation being issued on April 20, 1977. The Respondent received this citation on April 21, 1977 and had 15 working days in which to contest the alleged violations and the \$700 penalty for the serious violation, Citation 2, Item 1. The fifteen working days expired May 12, 1977. No contest was received by this date and the violations and penalty became a final and unreviewable order of the Review Commission pursuant to KRS Chapter 338.141(1).

On April 27, 1977 the Department of Labor issued an Abatement Notice to Kuempel Company stating that there had been no notification of correction of the items listed as violations in the April 20, 1977 citation. This notice informed the Respondent that additional penalties could be imposed for failure to abate.

A follow-up inspection was conducted on May 11, 1977 with a failure to abate notification issuing on May 18, 1977. The Respondent received the failure to abate notice on May 19, 1977 and had 15 working days, until June 10, 1977, in which to contest. The \$700 penalty in the failure to abate notification was for failure to correct Citation 1, Item 4 of the original April 20, 1977 citation.

The Kuempel Company sent two letters to the Department of Labor, dated June 10, 1977. The first letter stated that all violations of the April 20 citation were corrected. The second requested further information regarding Citation 2, Item 1, of April 20.

Neither of these letters even in a liberal reading constitutes a contest of the May 18, 1977 failure to abate notification. The failure to abate and the \$700 penalty were not contested within the time period allowed by the statute and thus became a final and unreviewable order of this Commission.

The Respondent has been careless in exercising its right to contest, a right noted on various documents they received. By not contesting, the citation of April 20, 1977, the failure to abate notification of May 18, 1977, and the proposed penalties have become final orders. This Commission is without jurisdiction to review the merits of the case.



H. L. Stowers, Commissioner

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

Dated: October 6, 1977  
Frankfort. Kentucky

DECISION NO. 476

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  
Attention: Honorable Michael D. Ragland  
Executive Director for  
Occupational Safety & Health

Honorable Kenneth E. Hollis (Messenger Service)  
General Counsel  
Department of Labor  
Frankfort, Kentucky  
Attention: Timothy P. O'Mara  
Assistant Counsel

The Kuempel Company, Inc. (First Class Mail)  
824 Fifth Avenue, Room 214  
Huntington, West Virginia 25701

Mr. M. L. Garrison, Project Manager (Certified Mail #240718)  
The Kuempel Company, Inc.  
Post Office Box 1799  
Huntington, West Virginia 25718

This 6th day of October, 1977.

  
Iris R. Barrett  
Executive Director



KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

104 BRIDGE ST.

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

July 15, 1977

JULIAN M. CARROLL  
GOVERNOR

IRIS R. BARRETT  
EXECUTIVE DIRECTOR

MERLE H. STANTON  
CHAIRMAN

CHARLES B. UPTON  
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MEMBER

KOSHRC #382

COMMISSIONER OF LABOR  
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

KUEMPEL COMPANY, INC.

RESPONDENT

ORDER GRANTING COMPLAINANT'S  
MOTION TO DISMISS  
RESPONDENT'S NOTICE OF CONTEST

Complainant in the above-styled case has made a Motion to Dismiss Respondent's Notice of Contest alleging that the letter of contest was received more than fifteen working days after Respondent's receipt of the original citation.

Respondent received the original citation on April 21, 1977. The fifteen working day period to contest ended May 12, 1977. A follow-up inspection was conducted with Respondent receiving notification of failure to abate on May 19, 1977. The fifteen working days to contest the notification ended June 10, 1977. The first letter indicating contest was received from the Respondent on June 15, 1977.

Due to Respondent's failure to file a timely Notice of Contest, the citation of April 20, 1977, and the notification of failure to abate dated May 18, 1977 have become final orders of the Review Commission pursuant to KRS 338.141(1).

IT IS ORDERED that Complainant's Motion be and it is hereby GRANTED and this case is DISMISSED.

Dated: July 15, 1977  
Frankfort, Ky.

*Wayne Waddell*  
Wayne Waddell

Counsel, KOSH REVIEW COMMISSION

DECISION NO. 440