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KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

JULIAN M. CARROLL  
GOVERNOR

REVIEW COMMISSION

104 BRIDGE ST.

MERLE H. STANTON  
CHAIRMAN

IRIS R. BARRETT  
EXECUTIVE DIRECTOR

FRANKFORT, KENTUCKY 40601

CHARLES B. UPTON  
MEMBER

PHONE (502) 564-6892

JOHN C. ROBERTS  
MEMBER

March 14, 1978

KOSHRC #406

COMMISSIONER OF LABOR  
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

CONN CONSTRUCTION COMPANY

RESPONDENT

DECISION AND ORDER OF  
REVIEW COMMISSION

Before STANTON, Chairman, UPTON and ROBERTS, Commissioners.

PER CURIAM:

A Recommended Order of Hearing Officer John T. Fowler, Sr., issued under date of December 19, 1977, is presently before this Commission for review, pursuant to an Order of Direction for Review by the Commission.

This Commission finds no error in the application of the law to the facts herein, and the evidence adequately supports the findings and conclusions of the Hearing Officer.

Therefore it is the ORDER of this Commission that the Recommended Order in this case be and it is hereby AFFIRMED. The violations and proposed penalties are SUSTAINED. Abatement of the violations shall be immediate.

*Merle H. Stanton*  
Merle H. Stanton, Chairman

Dated: March 14, 1978  
Frankfort, Ky.

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

DECISION NO. 543

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


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

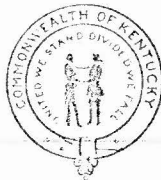
The Honorable Kenneth E. Hollis (Messenger Service)  
General Counsel  
Department of Labor  
Frankfort, Kentucky 40601  
Attention: Larry D. Hamfeldt  
Assistant Counsel

Mr. William F. Branscome (Certified Mail #783035)  
Vice President  
Conn Construction Company  
P. O. Box 431  
New Castle, Pennsylvania 16103

This 14th day of March, 1978.

  
Iris R. Barrett  
Executive Director

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*406 (504)*

JULIAN M. CARROLL  
GOVERNOR

IRIS R. BARRETT  
EXECUTIVE DIRECTOR

*KOSHRC  
Decision &  
Order No. 504*

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

104 BRIDGE ST.

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

December 19, 1977

MERLE H. STANTON  
CHAIRMAN

CHARLES B. UPTON  
MEMBER

JOHN C. ROBERTS  
MEMBER

KOSHRC # 406

COMMISSIONER OF LABOR  
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

CONN CONSTRUCTION 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. 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.

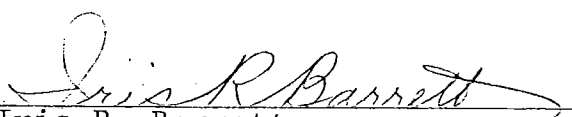
Copy of this Notice and Order has been served by mailing or personal delivery on the following:

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

The Honorable Kenneth E. Hollis (Messenger Service)  
General Counsel  
Department of Labor  
Frankfort, Kentucky 40601  
Attention: Larry D. Hamfeldt  
Assistant Counsel

Mr. William F. Branscome (Certified Mail #240813)  
Vice President  
Conn Construction Company  
P. O. Box 431  
New Castle, Pennsylvania 16103

This 19th day of December, 1977.

  
Iris R. Barrett  
Executive Director

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH  
REVIEW COMMISSION

KOSHRC NO. 406

COMMISSIONER OF LABOR  
COMMONWEALTH OF KENTUCKY

COMPLAINANT

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

CONN CONSTRUCTION COMPANY

RESPONDENT

\* \* \* \* \*

Hon. Larry D. Hamfeldt, Department of Labor, 801 West Jefferson  
Street, Louisville, Kentucky 40202 for the Complainant.

No one appeared for the Respondent at the Hearing.

FOWLER - Hearing Officer.

\* \* \* \* \*

On August 2, 1977, an inspection was made by Compliance  
Officers for the Department of Labor of a place at which employees  
of Respondent Company were working at Third and Sycamore Streets in  
Newport, Kentucky.

As a result of that inspection numerous citations were  
issued, of which two (2) are in contest, being Citation 1, Item 19  
and Citation 2, the Citations being more particularly described as  
follows:

(a) Violation of 29 CFR 1926.451(a)(4):

Employees exposed to a fall from two (2) tube and coupler scaffolds running in between them approximately twenty (20) feet above the ground under the span N.O.P. area were not provided with standard guardrails nor were personal protective equipment (e.g. safety belts and lifelines provided) provided and used.

(b) Violation of 29 CFR 1926.500(b)(1):

One (1) U-shaped floor opening on the south side of the bridge with dimensions of approximately three (3) feet wide and twenty (20) feet long on both sides and thirty (30) feet wide and twenty (20) feet long on the north end, that exposed employees to a fall of greater than thirty (30) feet, was not guarded by a standard guardrail or cover.

The violation alleged in Paragraph A is a non-serious violation within the meaning of the act and the violation alleged in Paragraph B is an alleged serious violation within the meaning of the Act.

The proposed abatement date for each of the alleged violations was August 18, 1977, and the proposed penalty for the non-serious violation, being Paragraph (a) above, is \$47.00 and the proposed penalty for the alleged serious violation, being Paragraph (b) above, was \$750.00.

The pertinent procedural information is as follows:

1. Inspection of premises, Third and Sycamore Streets, Newport, Kentucky - a place at which employees of Respondent Company were working on August 2, 1977.
2. Citation issued August 19, 1977, citing several alleged violations of which the two aforesaid are in contest.
3. Notice of Contest received August 24, 1977, contesting the above enumerated citations.

4. Notice of Contest with copy of Citation and Proposed Penalty transmitted to the Review Commission August 29, 1977.
5. Notice of Receipt of Contest mailed August 30, 1977, and Certification of Employer Form received September 1, 1977.
6. Complaint received September 6, 1977 and no formal Answer is filed.
7. The case was assigned to a Hearing Officer September 28, 1977, and the Hearing was scheduled October 13, 1977, and at the request of the Respondent Company was passed until November 1, 1977, at which time it was held at the Department of Highways Building, in Covington, Kentucky, at 10:00 A.M.
8. The Notice of the Receipt of the Transcript of the Evidence was mailed to the parties November 28, 1977.
9. Two letters were received by the Hearing Officer from the Respondent Company, the first dated October 5, 1977, which requested a continuance from the October 13, 1977, hearing date which was granted and the case was passed to November 1, 1977; and a letter from the Respondent Company dated November 11, 1977, received November 15, 1977, in reference to the case in which certain items are attempted to be explained by the Respondent together with an apology for not being able to attend the Hearing.

#### DISCUSSION OF THE CASE

This case, after postponement, was set for November 1, 1977, and heard at 10:00 A.M. at District 6, Bureau of Highways Office, Covington, Kentucky. As is stated aforesaid, the Respondent Company wrote to the Hearing Officer and received a continuance of the action which was originally set for October 13, 1977, at the same location.

The case was called at 10:00 A.M. in accordance with the Notice and the Complainant by Counsel and the Compliance Officer were present together with the Hearing Officer and the Hearing Officer postponed the Hearing until 10:20 A.M. and not having heard from the Respondent or any person for the Respondent, and the Respondent having been duly advised of the Hearing date, the Hearing Officer ordered the proceeding to begin with the Complainant introducing its proof in connection with the Contest (TE 3).

The proof indicates that Calvin M. Townsend is the Compliance Officer for the Kentucky Department of Labor and that he made his inspection of premises at which Respondent's employees were working on August 2, 1977, and that the inspection took place at the bridge at Third and Sycamore in Newport, Kentucky, with Conn Construction Company, Respondent herein, being the employer (TE 4).

The Compliance Officer states that he took notes and that he held an opening conference, walk around inspection and a closing conference (TE 5). That there were representatives with the Respondent at all the conference and the walk around and that Citations were issued, including the ones in contest in this action.

The Compliance Officer testified that he observed scaffolds approximately twenty (20) feet from the ground with material on it that showed that employees had been working on the scaffold and that he was informed by a Mr. Branscome that employees had been working on the



scaffold and that there were no evidences of safeguards on the scaffold (TE 6, 7); that he saw no evidence of employees wearing safety belts nor was there any evidence that safety belts had been in anywise tied off to the scaffolding (TE 7); there was approximately twenty (20) feet from the place of the scaffold to the river bank and the Compliance Officer introduces photographs of the conditions which he found at the time of his inspection (TE 8).

The witness states that it would have been possible and feasible to have abated the hazard by placing guardrails and toeboards around the scaffolding or by using safety belts and that Citation No. 2 is a serious violation guarding floor openings and floor holes (TE 9); the witness testifies that the purpose of this standard is to protect employees from walking through a floor opening. (TE 9).

The witness says that the employees were removing old concrete and replacing it with new on the bridge; that they had removed the concrete from the front of the bridge and also the side and approximately three (3) feet on the sides; that there is loose gravel and concrete on the edges which employees if they would happen to step on it would roll or fall. The witness made a drawing of the area and explained it to the Hearing Officer (TE 10).

The Compliance Officer states that he actually saw employees exposed to the hazards and that they would have fallen approximately thirty (30) feet to a river bank which was dirt rock and debris (TE 11, 12). Additional photographs were taken during the walkaround inspection and they are introduced as Exhibits (TE 12, 13, 14 & 15).

The witness testifies that he did discuss the condition with the Vice President of the corporation, Mr. Branscome, and that he was advised that there had been 55 gallon drums in the area and that they had been removed. (TE 17). The proposed penalty is explained (TE 18, 19, 20, 21 & 22).

At the conclusion of the Compliance Officers' testimony the Respondent had still not appeared, either in person or by counsel, nor had any communication been received for or on behalf of the Respondent and the testimony was closed (TE 22).

A discussion of this case must be, of course, limited to the evidence introduced by the Department of Labor since the Respondent did not appear, although it is acknowledged that he did receive notice to appear since he subsequently sent a letter of apology for not appearing. The evidence essentially shows that the employees were working on a bridge being remodeled or reconstructed over the river and that they were exposed to the dangers set forth in both of the Citations and that there was sufficient evidence to show a violation of both of the Citations as presented by the evidence in this case.

#### FINDINGS OF FACT

It is found as a matter of fact by the Hearing Officer as follows:

1. That sufficient evidence was introduced to show a violation of both of the Citations as alleged in the Complaint.

2. That the Respondent received proper notice of the hearing and gave no explanation for not appearing or having counsel at such hearing.

3. That the evidence supports the Citations in that one citation was a non-serious violation and the other was a serious violation within the meaning of the Act.

Your Hearing Officer reaches the following conclusions of Law:

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction of the subject matter and of the parties involved in this case.

2. Proper procedures were followed by opening conference, walk around inspection and closing conference with the Respondent's representatives in this case.

3. The law as previously set forth by this Commission and the various Review Commission decisions supports the finding of sustaining both citations in this action.

#### RECOMMENDED ORDER

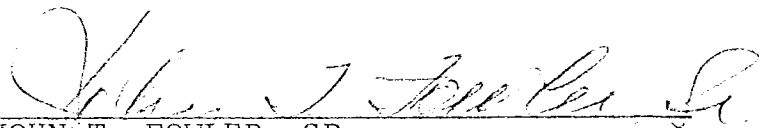
IT IS ORDERED AND ADJUDGED that the citation against the Respondent for a violation of 29 CFR 1926.451(a)(4) being No. 6a of the Complaint herein, may be and the same is hereby sustained and that the proposed penalty of \$47.00 in connection with the said violation is also sustained.

IT IS FURTHER ORDERED AND ADJUDGED that the citation for the violation of 29 CFR 1926.500(b)(1) as contained in paragraph 6b of the Complaint together with the proposed penalty of \$750.00 is sustained.

IT IS FURTHER ORDERED AND ADJUDGED that the abatement  
date for said violations shall be as follows:

The abatement date for the non-serious violation as set  
forth in paragraph 6a of the Complaint shall be within thirty (30)  
of the effective date of this Order.

The effective date of the abatement for the serious viola-  
tion as set forth in paragraph 6b of the Complaint shall be immediate.

  
JOHN T. FOWLER, SR.  
Hearing Officer

Dated: December 19, 1977  
Frankfort, Kentucky

DECISION NO. 504