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KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

JULIAN M. CARROLL  
GOVERNOR

REVIEW COMMISSION

MERLE H. STANTON  
CHAIRMAN

IRIS R. BARRETT  
EXECUTIVE DIRECTOR

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FRANKFORT, KENTUCKY 40601  
PHONE (502) 564-6892

CHARLES B. UPTON  
MEMBER

JOHN C. ROBERTS  
MEMBER

October 19, 1979

KOSHRC #583

COMMISSIONER OF LABOR  
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

CHARTER BUILDERS, INC.

RESPONDENT

DECISION AND ORDER OF  
REVIEW COMMISSION

Before STANTON, Chairman; UPTON and ROBERTS, Commissioners.

PER CURIAM:

A Recommended Order of Hearing Officer Wayne Waddell, issued under date of July 10, 1979, is presently before this Commission for review, pursuant to a Petition for Discretionary Review filed by the Respondent.

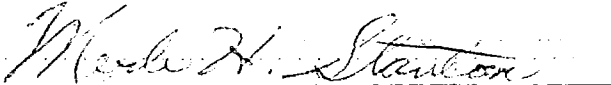
We find that the evidence adequately supports the Hearing Officer's finding that the Respondent was in violation of 29 CFR 1926.500(b)(1)(as adopted by 803 KAR 2:030) and 29 CFR 1926.500(d)(1)(as adopted by 803 KAR 2:030).

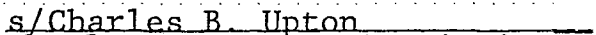
We further find that the penalty reductions recommended by the Hearing Officer were appropriate under the circumstances.

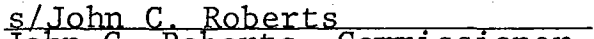
Consistent with our holding in Gateway Erectors, KOSHRC #582, we reject Hearing Officer Waddell's conclusion that a repeat multiplier should not be used in calculating a penalty for a serious violation where the first instance violation was non-serious and carried no penalty.

This Commission nevertheless is of the opinion that the record indicates other mitigating circumstances sufficient to justify the recommended reduction in penalty.

Accordingly, it is the unanimous ORDER of this Commission that the Recommended Order of the Hearing Officer be and it is hereby AFFIRMED, except for the legal conclusion of the Hearing Officer hereinabove mentioned, which is hereby OVERRULED. All findings and conclusions of the Hearing Officer not inconsistent with this opinion are hereby AFFIRMED.

  
Merle H. Stanton, Chairman

  
Charles B. Upton, Commissioner

  
John C. Roberts, Commissioner

DECISION NO. 77<sup>3</sup>~~2~~

DATED: October 19, 1979  
Frankfort, Kentucky

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

Commissioner of Labor  
Commonwealth of Kentucky  
U. S. 127 South  
Frankfort, Kentucky 40601  
Attention: Hon. Michael D. Ragland  
Executive Director for  
Occupational Safety & Health (Messenger Service)


Hon. Frederick G. Huggins  
Deputy General Counsel  
Department of Labor  
U. S. 127 South  
Frankfort, Kentucky 40601 (Messenger Service)

Mr. A. D. McMullan, Pres.  
Charter Builders, Inc.  
2525 North Stemmons Freeway, Suite 520  
Dallas, Texas 75207 (Cert. Mail #783431)

Charter Builders, Inc.  
251 East Vine Street  
Lexington, Kentucky 40507 (Cert. Mail #783432)

Hon. Robert C. Elder, Jr.  
Smith Smith Dunlap & Canterbury  
4050 First National Bank Building  
Dallas, Texas 75202 (Cert. Mail #783433)

This 19th day of October, 1979.

  
Iris R. Barrett  
Executive Director