

WV

659

*Keep must be
incidental to nature
of work
FV*



KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

John Y. Brown, Jr.
GOVERNOR

REVIEW COMMISSION

MERLE H. STANTON
CHAIRMAN

IRIS R. BARRETT
EXECUTIVE DIRECTOR

104 BRIDGE ST.
FRANKFORT, KENTUCKY 40601
PHONE (502) 564-6892

CHARLES B. UPTON
MEMBER

JOHN C. ROBERTS
MEMBER

September 8, 1980

KOSHRC #659

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

CENTRAL PRODUCTS, INC.

RESPONDENT

DECISION AND ORDER OF
REVIEW COMMISSION

Before ROBERTS and UPTON, Commissioners.

BY THE COMMISSION:

A Recommended Order of Hearing Officer Charles A. Goodman III, issued under date of June 17, 1980, is presently before this Commission for review pursuant to an order of direction for review by the Commission.

Summary of the Case

The case below involved an alleged serious violation of 29 CFR 1910.212(a)(3)(ii) (as adopted by 803 KAR 2:020) along with the penalty proposal of \$420.

Two shears for the extruder machines, depicted in Complainant's photo exhibits 1, 2 and 3, were considered hazardous and were the basis for the citation for failure to guard the point of operation.

The shears operate automatically to cut sheets of plastic and rubber. Employees working on the "off" side of the shear periodically remove the stacks of cut pieces from a table. This latter function requires that the employees place their hands within 18 to 24 inches of the unguarded cutting edge.

Hearing Officer Goodman concludes, after careful consideration of the facts and circumstances in the record, that the possibility of employee contact with the operating edge of the shear is quite remote. This conclusion is based upon the periodic nature of the removal process, the distance from the cutting edge and the employee's outward motion away from the machine.

Mr. Goodman further finds that where the possibility of injury or contact is remote, it is incumbent upon the Complainant to establish by a preponderance of the evidence that the risk is incident to the nature of the work or the place of employment.

According to the recommended decision, the above-mentioned connection or nexus with the work process has not been established. The alleged serious violation of 29 CFR 1910.212(a)(3)(ii) is dismissed along with the penalty proposal.

Decision of the Commission

After careful consideration and review of the record in this case, we support and sustain the Hearing Officer's recommended order of dismissal of the alleged serious violation and its penalty proposal.

Order

The Recommended Order below, dismissing the alleged serious violation of 29 CFR 1910.212(a)(3)(ii) (as adopted by 803 KAR 2:020) along with the penalty proposal, is hereby SUSTAINED.


John C. Roberts, Commissioner

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

DATED: September 8, 1980
Frankfort, Kentucky

DECISION NO. 907


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

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

Hon. Kenneth J. Costelle (Messenger Service)
Assistant Counsel
Department of Labor
U. S. 127 South
Frankfort, Kentucky 40601

Mr. L. A. Loeffler, Gen'l Mgr. (Cert. Mail #P14 8475597)
Central Products, Inc.
P. O. Box 551
Central City, Kentucky 42330

This 8th day of September, 1980.


Iris R. Barrett
Executive Director