



JOHN Y. BROWN, JR.  
GOVERNOR

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

AIRPORT BLDG., LOUISVILLE RD., (U.S. 60-West)

FRANKFORT, KENTUCKY 40601

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ROBERT T. COBB  
CHAIRMAN

CARL J. RUH  
MEMBER

CHARLES E. BRADEN  
MEMBER

KOSHRC #860

COMMISSIONER OF LABOR  
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

LOUISVILLE GAS & ELECTRIC COMPANY

RESPONDENT

DECISION AND ORDER OF  
REVIEW COMMISSION

Before COBB, Chairman; RUH and BRADEN, Commissioners.

RUH and BRADEN, for the majority. COBB, abstaining.

A Recommended Order of Hearing Officer Charles A. Goodman, III, issued under date of June 6, 1983, is presently before this Commission for review pursuant to a Petition for Discretionary Review filed by the Respondent.

Summary of the Case

This matter arose from citations issued subsequent to an inspection of the Respondent's Cane Run Road facility in December of 1980 and January 1981. Although an extensive hearing was necessary to address all the issues before the Hearing Officer, the matters raised in the Respondent's petition, and those on review, are limited in scope and number. The Respondent challenges the finding of a serious violation and penalty associated with Item 1(a) of Citation 4, 29 CFR 1910.95(a); Items 3(c) and 3(e) of Citation 4, 29 CFR 1910.1001(f)(1) and 29 CFR 1910.1001(h)(2).

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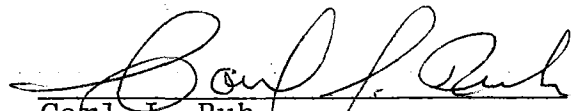
Decision of the Commission


After review of the record concerning exposure of the employee using the pneumatic wrench in the boiler pump area, we question the adequacy of the Complainant's proof of a serious violation. We likewise question whether the violation of the relevant asbestos standards, 1910.1001(f)(1) and 1910.1001(h)(2), can be deemed serious in nature in the absence of monitoring which establishes a hazardous level of fibers.

Order of the Commission

IT IS HEREBY ORDERED that the violation of Citation 4 - Item 1(a), 29 CFR 1910.95(a), is reduced to a non-serious designation and is SUSTAINED. The proposed penalty of \$640 is reduced to \$100 and is likewise SUSTAINED.

IT IS FURTHER ORDERED that the violations of Citation 4 - Items 3(c) and 3(e), 29 CFR 1910.1001(f)(1) and 29 CFR 1910.1001(h)(2) are reduced to a nonserious designation and are SUSTAINED. The combined penalty proposal of \$720 is reduced to \$100 and is likewise SUSTAINED.

  
Carl J. Ruh  
Commissioner

  
Charles E. Braden  
Commissioner

DATED:

DECISION NO.