

**BEFORE THE SAFETY AND HEALTH REVIEW BOARD
OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA**

COMMISSIONER OF LABOR FOR
THE STATE OF NORTH CAROLINA,

COMPLAINANT,

v.

AUTUMN CARE OF MARSHVILLE,

RESPONDENT.

DOCKET NO. OSHANC 2004-4341
OSHA INSPECTION NO. 307379909
CSHO ID NO. N6184

ORDER

THIS MATTER was heard by the undersigned on August 25, 2004 in Charlotte, North Carolina.

The complainant was represented by Newton G. Pritchett, Jr., Assistant Attorney General; the respondent was represented by Michael C. Lord.

After hearing and receiving the evidence, hearing the arguments of counsel and receiving post-hearing authorities, the undersigned makes the following

FINDINGS OF FACT

1. The complainant as Commissioner of Labor is charged by law with compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina (the "Act").
2. The respondent is a long term care facility located at 311 West Phifer Street, Marshville, North Carolina and is an operating unit of Autumn Corporation. It has 120 employees at the Marshville facility.
3. On January 8, 2004, the complainant received a complaint of an alleged injury at respondent's facility.
4. Jerry Allen Barker, a safety compliance officer for the complainant, was assigned by complainant to investigate this alleged injury.
5. Mr. Barker conducted an inspection of the kitchen area of respondent's facility on January 9, 2004. Pursuant to that inspection, Mr. Barker conducted an opening and closing conference with Pat Troxell, respondent's then facility manager, and conducted employee interviews with Darius Johnson, Catherine Polk, Carrie Sledd, Sandra Cureton and Judy Williams. He also took notes and photos and prepared a report.
6. This inspection revealed that Amy Stanley, a kitchen employee of respondent, was attempting to put a metal tray of spaghetti in a stainless steel refrigerator in respondent's kitchen facility. She placed the tray on an adjacent stainless steel milk cooler and grabbed the refrigerator door handle, receiving an electrical shock. This incident occurred on Saturday, January 3, 2004.
7. Ms. Stanley was immediately treated by Judy Williams, respondent's licensed practical nurse, who reported that Ms. Stanley was shaken up and later had a headache. Ms. Stanley finished her shift and did not require any further treatment.
8. On Monday, January 5, 2004, Sandra Cureton, the kitchen supervisor, was briefed on the circumstances of Ms. Stanley's accident and investigated the condition of the refrigerator and milk cooler. Ms. Cureton also received a shock from the refrigerator door but did not require any medical treatment and did not leave work.
9. On that same Monday morning, Ms. Troxell learned of the shock to Ms. Cureton and Ms. Stanley and had the refrigerator disconnected until it could be fixed.
10. The refrigerator is a commercial refrigerator rated at 120 volts. It was not connected to a GFCI circuit. When Mr. Barker inspected the refrigerator, it was in good working order. There is no evidence to indicate how much electricity leaked into the nonenergized refrigerator parts.
11. During his inspection, Mr. Barker did learn that the plug on the refrigerator cord had been replaced on either January 5th or 6th because the grounding pin was missing on the plug. The lack of a grounding pin on the plug could cause nonenergized parts of the refrigerator to retain electricity.
12. It is likely that the missing grounding pin caused the refrigerator door to retain electrical energy and in turn caused Ms. Stanley and Mrs. Cureton to each sustain a shock.
13. The milk cooler was checked by its supplier, Pet Dairy, which determined that it was not malfunctioning.
14. When the refrigerator is plugged in, it is impossible to see or otherwise determine that the ground pin is missing from the plug. There is no evidence to indicate how the grounding pin became missing. The refrigerator had been in service at respondent's facility for at least 17 years without mechanical problems.
15. The refrigerator is on casters, allowing it to be moved for cleaning. From time to time, the refrigerator would be moved for cleaning, although the ground clearance for the refrigerator allows some cleaning to take place without moving the refrigerator.
16. There is no persuasive evidence to suggest that it is standard in industry to periodically check all electrical equipment with an AC sensor.
17. There is no evidence that the respondent has or could have had any knowledge of the missing grounding pin on the refrigerator cord plug at the time of the shock to Ms. Stanley, but it did have or could have had knowledge of the condition of the plug at the time of Ms. Cureton's shock.
18. There is no persuasive evidence that the respondent's employees were trained to report this type of incident in a particular way or that any employee was disciplined for the way in which this incident was handled.

Based on the foregoing Findings of Fact, the undersigned makes the following

CONCLUSIONS OF LAW

1. The foregoing Findings of Fact are incorporated by reference as Conclusions of Law to the extent necessary to give effect to the provisions of this Order.
2. The respondent is subject to the provisions of the Act.
3. The complainant proved by the greater weight of the evidence that the respondent violated the cited standard, 29 CFR 1910.304 (f)(5)(v)(C)(1), but the complainant did not prove by the greater weight of the evidence that the violation was a serious violation of the standard.
4. Since the cited standard specifically names refrigerators as a covered item of equipment, the respondent was cited under the correct standard.
5. The respondent failed to prove by the greater weight of the evidence the affirmative defense of isolated employee misconduct.

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS ORDERED as follows:

1. Citation 1, Item 1 is affirmed as a nonserious violation of 29 CFR 1910.304 (f)(5)(v)(C)(1) with no penalty.
2. All violations not previously abated shall be immediately abated.

This 16th day of September, 2004.

RICHARD M. KOCH
HEARING EXAMINER