

BEFORE THE NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

RALEIGH, NORTH CAROLINA OCT 26 2017

COMMISSIONER OF LABOR FOR)
THE STATE OF NORTH CAROLINA)
)
COMPLAINANT,)
)
v.)
)
GOODWILL INDUSTRIES OF EASTERN)
NORTH CAROLINA, INC.)
and its successors)
)
RESPONDENT.)
)

DOCKET NO.: OSHANC 2016-5876
INSPECTION NO.: 318088903
CSHO ID.: S4339

ORDER

THIS CAUSE came on for hearing and was heard before the undersigned R. Joyce Garrett, Administrative Law Judge for the North Carolina Occupational Safety and Health Review Commission, on October 2, 2017, at 10 A.M. pursuant to a Notice of Hearing. Larissa S. Williamson, Special Deputy Attorney General, North Carolina Department of Justice, appeared by teleconference for Complainant. Attorney Michael D. McKnight of Ogletree Deakins, Raleigh, North Carolina, appeared by teleconference for the Respondent. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Hearing.

At the time of the Hearing the parties agreed upon and consented to the following Stipulations.

STIPULATIONS

1. Respondent and Complainant waive the presence of a court reporter at the Hearing and the making of a transcript of the Hearing.
2. Respondent is a non-profit corporation duly organized and existing under the laws of the State of North Carolina. Respondent maintains a place of business in Elizabeth City, North Carolina.
3. Complainant and Respondent have no objection, either procedural or otherwise, to this Hearing and both parties consent to the conduct of this Hearing by the Undersigned and to entry of this Order.

4. On October 5, 2016, Safety Compliance Officer Veatasha Dorsey, employed by the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at 502 West Eringhaus Street in Elizabeth City, North Carolina, North Carolina.

5. As a result of the inspection, on November 4, 2016, Complainant issued the following Citation and Notification of Penalty (herein referred to as the "Original Citation"):

CITATION 01 (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1910.132(d)(1)(i)	November 15, 2016	\$1,350.00

6. The Respondent submitted a timely Notice of Contest, dated December 6, 2016.

7. The parties agree to bear their own attorney's fees, costs and other expenses that have been incurred in connection with any stage of these proceedings up to and including the filing of this Order.

8. Complainant and Respondent agree that provided the respective Motions of each party are granted (a) there are no other matters that remain to be decided, and that other than a ruling with respect to the Motions no outstanding issues remain to be resolved by an evidentiary hearing of this matter; (b) this Order is a full and final resolution of the claims set out in the underlying Original Citation, as amended pursuant to Complainant's Motion; (c) the modification of any portion of the Original Citation by Complainant shall not be deemed to be an admission by Complainant that any such portion was alleged without merit, (d) none of the agreements, statements, stipulations and actions taken by Respondent shall be deemed an admission by the Respondent of any of the allegations contained in the Original Citation as amended or waiver of defenses; provided however that in any subsequent proceeding with respect to matters covered by this Order brought directly under the Occupational Safety and Health Act of North Carolina (hereinafter referred to as the "Act") by Complainant, this Order shall have the full force and effect of a final order; and (e) the agreements, statements, stipulations and actions herein by Complainant and by Respondent are solely for the purpose of resolving this matter economically and amicably without further litigation and shall not be used for any other purpose except for proceedings and matters arising under the Act and Article 21, Chapter 95 of the North Carolina General Statutes; and (f) there has been no employee objection to the reasonableness of any abatement period.

9. Respondent agrees to continue to use its best efforts to comply with the requirements of the Act. Respondent further agrees and confirms the following:

- the violations alleged in the Original Citation as amended pursuant to Complainant's Motion have been abated;
- for a period of two years from the date of this Order, Respondent shall document all occasions in which its sorters at the Elizabeth City store encounter contaminated sharps, as defined in 29 CFR§ 1910.1030(b), during sorting operations;
- for a period of two years from the date of this Order, Respondent shall document all occasions in which a management official/supervisor at its Elizabeth City store is called

to dispose of, and actually disposes of, wet or otherwise questionable items, in accordance with Goodwill's "Stop" Policy;

- Respondent shall conduct a new hazard assessment for sorters at its Elizabeth City store within three months of the date of this Order, followed by another hazard assessment for its sorters at its Elizabeth City store within one year of the previous assessment, in accordance with 29 CFR § 1910.132(d); Complainant confirms that completion of these hazard assessments by the Respondent will fulfill all obligations under this paragraph of the Order;
- Respondent shall revise its written "Stop" Policy in any future versions distributed to employees at its Elizabeth City store so that the policy is in bold type and/or otherwise emphasizes that its employees are not to handle wet articles of clothing; and
- Respondent shall provide all above documentation to North Carolina Department of Labor upon request.

MOTIONS

Complainant moved to make the following amendments to the Original Citation ("Complainant's Motion"):

- a) Delete Citation 01 Item 001, and its associated penalty, in its entirety.

No payment is required from Respondent to the North Carolina Department of Labor in connection with Complainant's Motion.

Respondent did not object to Complainant's Motion.

Respondent requested that upon the granting of Complainant's Motion that the Undersigned consider the following motion by the Respondent ("Respondent's Motion"):

to withdraw Respondent's Notice of Contest to the Original Citation as amended pursuant to Complainant's Motion set forth above.

Complainant did not object to Respondent's Motion.

FINDINGS OF FACT

Based on the Stipulations at the time of the Hearing and the record, the Undersigned makes the following Findings of Fact:

1. This Court has jurisdiction over the parties and the subject matter of this Hearing.
2. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.
3. Neither party has any objection, procedural or otherwise, to this Hearing.

4. Complainant, Commissioner of Labor of the State of North Carolina, is an agency of the State of North Carolina charged with the administration and enforcement of the provisions of the Act.
5. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Order.


CONCLUSIONS OF LAW

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.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That Complainant's Motion is hereby **GRANTED**; and
2. That Respondent's Motion is hereby **GRANTED**.

This 2nd day of October, 2017.



R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

For Complainant

Larissa S. Williamson, Special Deputy Attorney General
North Carolina Department of Justice
North Carolina Bar Number: 31504

For Respondent

Michael D. McKnight, Attorney at Law
Ogletree Deakins
North Carolina Bar Number: 36932

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4. Complainant, Commissioner of Labor of the State of North Carolina, is an agency of the State of North Carolina charged with the administration and enforcement of the provisions of the Act.
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2. That Respondent's Motion is hereby **GRANTED**.

This 2nd day of October, 2017.

R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

For Complainant



Larissa S. Williamson, Special Deputy Attorney General
North Carolina Department of Justice
North Carolina Bar Number: 31504

For Respondent

Michael D. McKnight, Attorney at Law
Ogletree Deakins
North Carolina Bar Number: 36932

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- 2. That Respondent's Motion is hereby **GRANTED**.

This 2nd day of October, 2017.

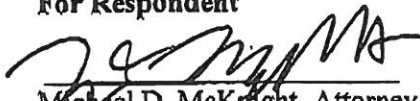
R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

For Complainant

Larissa S. Williamson, Special Deputy Attorney General
North Carolina Department of Justice
North Carolina Bar Number: 31504

For Respondent



Michael D. McKnight, Attorney at Law
Ogletree Deakins
North Carolina Bar Number: 36932

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served a copy of the foregoing ORDER, upon:

MICHAEL D. MCKNIGHT
OGLETREE DEAKINS
4208 SIX FORKS RD
SUITE 1100
RALEIGH, NC 27609

LARISSA WILLIAMSON
NC DEPARTMENT OF JUSTICE
LABOR SECTION
P O BOX 629
RALEIGH, NC 27602-0629

by depositing a copy of the same in the United States Mail, First Class;

NC DEPARTMENT OF LABOR
LEGAL AFFAIRS DIVISION
1101 MAIL SERVICE CENTER
RALEIGH, NC 27699-1101

by depositing a copy of the same in the NCDOL Interoffice Mail.

THIS THE 26 DAY OF October 2017.

ARLENE K. EDWARDS
CHAIRMAN


Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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