

**BEFORE THE NORTH CAROLINA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
RALEIGH, NORTH CAROLINA**

FILED

FEB 27 2019

COMMISSIONER OF LABOR FOR THE STATE OF NORTH CAROLINA)	DOCKET NO: 2018 - 5985
)	
)	INSPECTION
)	NO: 318110889
Complainant,)	
)	CSHO ID: D5581
v.)	
WF PARTNERSHIP and its successors)	<u>FINAL ORDER</u>
)	
)	
Respondent.)	

THIS CAUSE coming on pursuant to the Order For Pre-Hearing Conference (“Hearing Order”) on February 14, 2019 at the Lee House, 2nd Floor Hearing Room, 422 North Blount Street, Raleigh, North Carolina at 10:00 a.m. Melissa H. Taylor, Special Deputy Attorney General, and Sage Boyd, Assistant Attorney General appeared as counsel for the Complainant; Andrew M. Jackson, attorney, Clinton, North Carolina appeared for the Respondent.

Pursuant to the Hearing Order a pre-hearing conference (the “Hearing”) was held for the purpose of considering matters which would simplify the issues and expedite the proceedings in the above referenced case. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Hearing. At the Hearing Complainant and Respondent notified the Undersigned that the parties wish to agree upon certain stipulations (“Stipulations”) and to make certain motions (“Motions”).

This Hearing was not an evidentiary hearing and the specific facts and circumstances relevant to the Inspection (hereinafter defined) and the Original Citation (hereinafter defined) were not introduced of record, and such facts and circumstances are not included in the Stipulations hereinafter set forth. Based on the Original Citation, Complainant’s Complaint, and

Respondent's Answer filed in the matter, it appears that on June 23, 2017 one of Respondent's employees was injured while working in a sweet potato field (the "Accident") at Respondent's worksite at 596 Blake Road, Newton Grove, North Carolina located near 1324 Panhandle Road, Faison, North Carolina (the "Work Site"), and that: (1) Respondent is a North Carolina family farming business; (2) an accident report was made telephonically on behalf of Respondent and based on the Accident an inspection of Respondent's Work Site took place; (3) the Inspector (hereinafter defined) alleged that at the time of initial assignment and at least annually thereafter, Respondent did not instruct every employee in the safe operation and servicing of all covered equipment with which he was or would be involved; Respondent denied all such allegations.

As a result of this Hearing, Complainant and Respondent request that the Stipulations and Motions be made part of the Hearing record and that the Undersigned issue a Final Order. The Stipulations and Motions are as follows:

STIPULATIONS

1. The Complainant as Commissioner of Labor of the State of North Carolina is charged by law with compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina, Article 16, Chapter 95 of the General Statutes of North Carolina (hereinafter "the Act"). The Review Commission has jurisdiction over the parties and the subject matter to this action.
2. Respondent is a North Carolina family farming business that maintains a place of business in Newton Grove, North Carolina. Respondent is an "employer" within the meaning of N.C.G.S. Section 95-127(11); all of Respondent's employees referred to in this matter are "employees" within the meaning of N.C.G.S. Section 95-127(10).
3. On or about June 26, 2017, Safety Compliance Officer, Alan Fortner, employed by the North Carolina Department of Labor (the "Inspector"), commenced an inspection of the Work Site (the "Inspection"). Officer Fortner properly entered onto Respondent's Work Site and properly conducted the Inspection pursuant to an accident referral. George Warren, a Partner of Respondent, consented to the Inspection.
4. As a result of the Inspection, on December 20, 2017, Complainant issued one citation ("Citation 01") as more specifically described on Exhibit "A" (sometimes hereinafter referred to as the "Original Citation").
5. Respondent submitted a timely Notice of Contest dated January 11, 2018. On or about March 6, 2018 Complainant received "Employer's/ Respondent's Statement of Position" which requested that formal pleadings be served. Complainant filed the Complaint on March 20, 2018, and Respondent filed its Answer on April 13, 2018.
6. A Hearing in this matter was scheduled pursuant to the Rules of Procedure of the Safety and Health Review Commission of North Carolina (the "Rules").

7. Respondent and Complainant waive the presence of a court reporter at this Hearing and the making of a transcript of the Hearing. 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 Final Order.

8. Respondent posted the Original Citation and the Order For Pre-Hearing Conference as required by the Rules. Neither Complainant nor Respondent has received notification from any affected employee that such employee, or its representative, wishes to have a say in, or participate as a party in, this matter, or has any objections in connection with this matter including without limitation objection to the reasonableness of any abatement period.

9. Respondent confirms that the violation alleged in the Original Citation as amended pursuant to Complainant's Motion (hereinafter defined) has been abated.

10. The parties agree that upon granting of Complainant's Motion the penalty for each Item designated in the Original Citation as amended pursuant to Complainant's Motion has been calculated in accordance with the standard Field Operations Manual procedure and giving consideration by Complainant to standard mitigating factors and to specific factors applicable to Respondent.

11. **Respondent agrees to continue to use its best efforts to comply with the requirements of the Act. Further**

- **Respondent agrees to continue to train at time of initial assignment and at least annually thereafter on all covered equipment on the minimum requirements set out in 29 CFR 1928.57(a)(6)(i – v); this training will include but not be limited to the Kelley Manufacturing Company cultivator serial number 87531 (the "Cultivator"); the training will include safe operation of the Cultivator, how it works, not to ride on it while it is moving, and when and how to use the hammer (the hammer will be stored in the cab of the tractor while the Cultivator is moving);**
- **Respondent agrees that if Respondent sees a worker riding on a moving implement Respondent shall take necessary action to prevent such activity by enforcing its disciplinary action against the worker and the operator of the tractor (such as retraining, re-assignment, or any other disciplinary action deemed necessary to prevent reoccurrence); and**
- **Respondent agrees to post on all implements which are not provided with a seat or platform for riding a safety decal (in English and Spanish) stating "Warning – No Riding on Equipment".**

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

13. Complainant and Respondent agree that provided the respective Motions of each party are granted 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. The parties agree that this Final Order is a full and final resolution of the claims set out in the underlying Original Citation, as amended pursuant to Complainant's Motion. The parties further agree that (i) 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, and (ii) none of the foregoing 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 Final Order brought directly under the Act by Complainant, this Final Order shall have the full force and effect of a final order. 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.

MOTIONS

Complainant moved to do the following ("Complainant's Motion"):

amend the Original Citation as follows: to reclassify Citation 01 Item 001 as Non-Serious without penalty .

Except as expressly set forth in Complainant's Motion, the Original Citation shall remain unmodified or amended.

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 Act.
5. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Final Order.

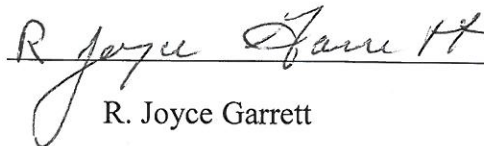
CONCLUSIONS OF LAW

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 Final 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**.

Effective the 20th day of February, 2019.



R. Joyce Garrett

Administrative Law Judge

CONSENTED TO:

For Complainant

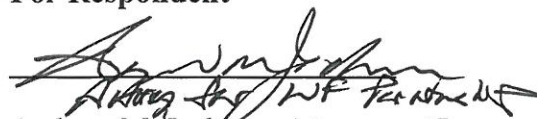


Melissa H. Taylor
Special Deputy Attorney General
North Carolina Department of Justice



Sage Boyd
Assistant Attorney General
North Carolina Department of Justice

For Respondent



Andrew M. Jackson, Attorney at Law
Clinton, North Carolina

Exhibit "A"
Original Citation

CITATION NUMBER 01 (Type of Violation: Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1928.57(a)(6)	1/3/2018	\$ 5,600.00
		TOTAL	\$ 5,600.00

CERTIFICATE OF SERVICE

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

ANDREW M. JACKSON
P O BOX 27
CLINTON, NC 28328

MELISSA H. TAYLOR
SAGE BOYD
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH, NC 27602-0629

by depositing a copy of the same in the United States Mail, postage prepaid, at Raleigh, North Carolina, and upon:

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 27 DAY OF February 2019.

ARLENE K. EDWARDS
CHAIRMAN



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