

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

FILED

NOV 16 2021

COMMISSIONER OF LABOR OF THE
STATE OF NORTH CAROLINA

COMPLAINANT,

v.

BLACKSTONE SHOOTING SPORTS, LLC
and its successors

RESPONDENT.

) DOCKET NO.: OSHANC 2018-6035
) INSPECTION NUMBER: 318128725
) CSHO ID: K2192

STIPULATION,
SETTLEMENT, AND
CONSENT JUDGMENT

This Matter was scheduled and called to hearing on Tuesday, November 16, 2021 to consider and resolve a citation issued to Blackstone Shooting Sports LLC (“Blackstone”) by the Commissioner of Labor of the State of North Carolina (“NCDOL”). At the Hearing, the parties presented the following facts and requested entry of a CONSENT JUDGMENT that included the following terms.

PROCEDURAL HISTORY

1. Blackstone is a limited liability company duly organized and existing under the laws of the State of North Carolina.
2. Blackstone maintains a place of business at 2001 Wilkinson Blvd., Charlotte, North Carolina, 28208.
3. Blackstone’s services include a firing range divided into three bays on which firearms are discharged (the “Range”).
4. On February 28, 2018 Peggy Reme, an Occupational Safety and Health Officer with the NCDOL, conducted a health compliance inspection of Blackstone’s worksite.
5. As a result of the inspection, on April 27, 2018, NCDOL issued the following Citations:

CITATION NUMBER ONE (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 C.F.R. § 1910.95(b)(1)	6/14/2018	\$2,800.00

CITATION NUMBER TWO (Non-Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1904.32(a)(4)	Immediate	\$300.00
2	29 CFR 1910.101(b)	Immediate	\$0.00
3	29 CFR 1910.157(e)(2)	Immediate	\$0.00
4	29 CFR 1910.303(g)(1)(ii)	Immediate	\$0.00

6. Blackstone submitted a timely Notice of Contest, dated June 7, 2018.

7. Blackstone submitted a Statement of Employer's / Respondent's Position dated August 13, 2021, in which it denied the violations alleged in CITATION ONE and admitted the violations alleged in CITATION TWO.

8. The parties have reached a settlement regarding the disposition of CITATION ONE and now seek entry of a CONSENT JUDGMENT that incorporates the agreed upon terms.

AGREED TERMS

9. The parties to this action hereby agree to the following terms to resolve the matter currently before the Hearing Examiner.

10. NCDOL agrees to reclassify Citation 1 Item 1 from Serious to Non-Serious and reduce the penalty from \$2,800.00 to \$1,400.00.

11. Blackstone agrees to abate the conditions alleged in Citation 1 Item 1 by doing the following:

- a. Blackstone shall limit the total time during a daily work shift that its employees are permitted to work on the Range to four hours while firearms are being discharged. For the avoidance of doubt, this limitation does not include time on

the Range when firearms are not being discharged, such as performing pre-opening and closing duties

- b. Absent additional feasible engineering or administrative controls, Blackstone will ensure that its employees working in the range while firearms are being discharged will utilize personal protective equipment with a minimum Noise Reduction Rating (“NRR”) of 30 dBA;
- c. Blackstone shall continue to administer an effective hearing conservation program in accordance with 29 CFR 1910.95(c)–(o), including but not limited to administering the Audiometric Testing Program required by 29 CFR 1910.95(g) and the Training Program required by 29 CFR 1910.95(k);
- d. Consistent with the Audiometric Testing Program required by 29 CFR 1910.95(g), Blackstone shall ensure that if an employee retested under 29 CFR 1910.95(g)(7)(ii) experiences a confirmed standard threshold shift as defined by 29 CFR 1910.95(g)(10)(i), Blackstone shall either (i) limit the total time during a daily work shift said employee is permitted to work on the Range to 2.5 hours while firearms are being discharged, or (ii) ensure said employee utilizes personal protective equipment with a minimum NRR of 34 dBA; and
- e. Blackstone shall continue to use its best efforts to comply with the requirements of the Occupational Safety and Health Act of North Carolina, N.C. Gen. Stat. § 95-126, *et seq.*

12. Blackstone shall complete the abatement requirements described in Paragraph 11 as soon as reasonably practicable, but in any event, within no more than 60 days after the entry of this CONSENT JUDGMENT.

13. 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 CONSENT JUDGMENT.

14. Blackstone will pay the agreed upon penalty of \$1,700.00—consisting of a \$1,400 penalty for Citation 1 Item 1 and a \$300 penalty for Citation 2 Item 1—within 10 days of entry of this CONSENT JUDGMENT.

15. The parties agree that this is a full and final resolution of the claims set out in the underlying CITATION ONE, and the stipulations herein, agreement to this settlement, and actions taken by Blackstone shall not be deemed an admission that it violated the cited standard. However, in any subsequent proceeding with respect to matters covered by this CONSENT JUDGMENT, the CITATION ONE, as amended herein, shall have full force and effect. The stipulations and actions herein are made solely for the purpose of settling 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 Occupational Safety and Health Act and Article 21, Chapter 95 of the North Carolina General Statutes.

16. The parties agree that there are no other matters that remain to be decided.

FINDINGS OF FACT

17. The terms of the Agreement are reasonable and supported by the underlying facts as set forth more fully in the Joint Pre-Hearing Report and Amended Joint Pre-Hearing Report filed by the parties.

18. There are no outstanding issues remaining to be resolved.

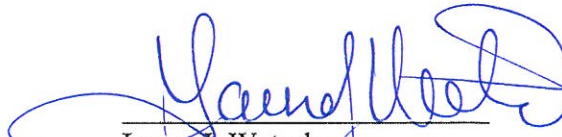
CONCLUSIONS OF LAW

19. The North Carolina Occupational Safety and Health Review Commission has jurisdiction over the parties to this action and over the subject matter.

20. The terms agreed to by the parties are consistent with the purpose and objectives of the Occupational Safety and Health Act of North Carolina.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, that the terms of the settlement are approved and incorporated into this CONSENT JUDGMENT, and both parties are hereby required to comply with the terms and conditions stipulated in this CONSENT JUDGMENT.

This the 16th day of November, 2021.



Laura J. Wetsch
Hearing Examiner

BY CONSENT:

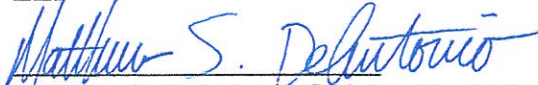
JOSH STEIN
ATTORNEY GENERAL

Victoria Voight

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Attorney for Blackstone Shooting Sports LLC

CERTIFICATE OF SERVICE

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

MATTHEW S DEANTONIO
BRADLEY ARANT BOULT CUMMINGS
214 N TRYON ST STE 3700
CHARLOTTE NC 28202

VICTORIA VOIGHT
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, first class, 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 18 DAY OF November 2021.



Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
1101 Mail Service Center
Raleigh, NC 27699-1101
TEL.: (919) 733-3589