

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

NC Occupational & Safety  
Commission

COMMISSIONER OF LABOR OF  
THE STATE OF NORTH CAROLINA

Complainant,

v.

PERDUE FOODS LLC  
and its successors

Respondent.

) DOCKET NO: 2019 - 6130

) INSPECTION  
) NO: 318149713

) CSHO ID: L9094

) FINAL 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 January 12, 2022 pursuant to a Notice of Hearing. Rory Agan, Assistant Attorney General, North Carolina Department of Justice, appeared for the Complainant. Michael D. McKnight, Attorney with Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Raleigh, North Carolina, appeared 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. 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 limited liability company, duly organized and existing under the laws of the State of North Carolina, which does business in the State of North Carolina and maintains a place of business in Concord, North Carolina. Respondent is in the business of producing poultry products. Respondent is an "employer" as defined by N.C.G.S. Section 95-127(11) and it maintains employees as defined by N.C.G.S. Section 95-127(10).

3. During the period of November 14, 2018 and March 12, 2019, an Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor, conducted an inspection of Respondent’s worksite located at 862 Harris St in Concord, North Carolina (the “Inspection”).

4. As a result of the Inspection, on April 17, 2019, Complainant issued the following Citation and Notification of Penalty (herein collectively referred to as the “Original Citation”):

**CITATION 01 (NonSerious)**

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
Grouped			
001a	29 CFR 1904.7(b)(3)	Immediately Upon Receipt	\$ 1,000.00
001b	29 CFR 1904.7(b)(4)	Immediately Upon Receipt	\$ 0.00
002	29 CFR 1904.7(b)(5)	Immediately Upon Receipt	\$ 1,000.00
		TOTAL	\$ 2,000.00

5. Respondent submitted a timely Notice of Contest.

6. The 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. Complainant and Respondent agreed that the Hearing in this matter shall be conducted via the video conferencing platform known as “Lifesize”, the presence of a court reporter during the Hearing is waived, the Hearing’s audio and video will be recorded through Lifesize (the “Recording”), the Recording will be the official record of the Hearing, and the Hearing will be deemed to have taken place in Raleigh, North Carolina. 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 Notice of Hearing as required by the Rules. Neither Complainant nor Respondent have 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 violations alleged in the Original Citation as amended pursuant to Complainant’s Motion have been abated as described in paragraph 12 below.

10. 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 Final Order.

11. 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 claim 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, including the amendment to add any item on Respondent's OSHA 300 logs, 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 Act by Complainant, this Order shall have the full force and effect of a final order; (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; (f) 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; and (g) there has been no employee objection to the reasonableness of any abatement period.

12. Respondent agrees to:

\* Abate Citation 1, Item 1b by amending its 2018 OSHA 300 log to include the two cases listed in that item. Respondent may make a notation on its log that those cases are being recorded solely as a part of its agreement to resolve this matter as reflecting in this Final Order.

\* Respondent will provide written instructions to employees at its Concord facility containing the name of the drug, the recommended dose, and the timeframe for taking each dose to employees who are provided over-the-counter medications in excess of the over-the-counter dosage.

\* Respondent will pay a total penalty of \$1,000.00 assessed in this matter within 30 days of the date of this Final Order (payment is to be by check payable to North Carolina Department of Labor, OSHA Division (identifying Inspection No. 318149713)) and mailed to Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

### MOTIONS

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

\* Delete Citation 1, item 1a, and Citation 1, item 2 and the penalties associated with each.

\* Retain the grouped penalty from Citation 1, Item 1b for a penalty of \$1000.00.

**Except as set forth in this 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 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**

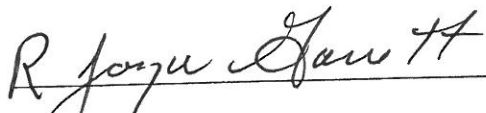
The foregoing Findings of Fact are incorporated by reference as Conclusions of Law to the extent necessary to give effect to the provisions of this Order.

**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**; Respondent shall pay the penalty of \$1,000.00 in the manner set forth in the Stipulations.

Perdue Foods LLC  
Docket No.: 2019-6130

This the 12<sup>th</sup> day of January, 2022.

A handwritten signature in cursive script, reading "R. Joyce Garrett", written over a horizontal line.

R. Joyce Garrett  
Administrative Law Judge



**CERTIFICATE OF SERVICE**

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

MICHAEL D MCKNIGHT  
OGLETREE DEAKINS  
PO BOX 31608  
RALEIGH NC 27622

By depositing same in the United States Mail, Certified Mail, Return Receipt Requested, postage prepaid at Raleigh, North Carolina, and upon:

RORY AGAN  
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

via email to [carla.rose@labor.nc.gov](mailto:carla.rose@labor.nc.gov).

THIS THE 19 DAY OF January 2022.

  
\_\_\_\_\_  
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