

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

FILED

COMMISSIONER OF LABOR OF THE)
STATE OF NORTH CAROLINA)
)
COMPLAINANT,)
)
)
v.)
)
INDUSTRIAL FABRICATORS, INC.,)
and its successors)
)
RESPONDENT.)
_____)

AUG 25 2022

ORDER

NC Occupational & Safety
Health Commission
**OSHANC NO. 2019-6181
INSPECTION NO. 318170057
CSHO ID: F5158**

THIS MATTER was before the undersigned for hearing via the Lifesize video conference platform on May 10-11, 2022.

The complainant was represented by Stacey A. Phipps, Assistant Attorney General; the respondent was represented by Gerald L. Liska of Mullen Holland & Cooper, PA.

Based on the evidence, consisting of testimony and admitted documents, and the post-hearing briefs of counsel, the undersigned makes the following

FINDINGS OF FACTS

1. The complainant as the 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 North Carolina corporation which is authorized to do business in North Carolina. The respondent is a manufacturer of metal parts and provides assembly and coating services.
3. The respondent operates nine different plant locations in North Carolina and has approximately 500 employees.
4. This matter involved an inspection at the respondent’s Central or “Alpha” plant as a result of an employee’s partial finger amputation which occurred on June 10, 2019. This plant is located at 105 Chickasaw Road, Gastonia, North Carolina. The inspection by the complainant’s safety and health compliance officer, George Calvery, occurred from June 17, 2019 to June 19, 2019.

5. On the date of the accident, James Griffin, a coil feed/press operator with two years' experience, was setting up a Bliss 400 Ton part rotation mechanical press. He set the press into inch mode and was feeding a new coil of steel into the die to set-up for a new run of product. He ran the steel into the first station of the die and punched the guide. He then used the inch mode to move the material to the second station. He then had to verify that the guide hole in the steel lined up with the guide pin in the die. To do this, he used the pinky finger on his right hand. At this point, the stored energy in the coil steel released as kinetic energy, causing the steel to move forward in the die, which amputated his finger to the first joint.

6. Under the standards, when performing set-up, service and maintenance procedures on a mechanical power press, lockout/tagout (LOTO) procedures must be followed, or the authorized alternative LOTO procedures. In this case, the respondent did not follow such procedures because it considered set-up to be part of operating the machine, and operators were not trained in LOTO procedures.

7. The respondent had written procedures in place for service and maintenance activities, but only trained its maintenance personnel in such procedures. It did not train operators such as Mr. Griffin, even though set-up qualified as a service and maintenance activity.

8. Under the respondent's die setting policy, operators were required to utilize safety blocks interlock devices which would immobilize the press; however, the operators never used such devices.

9. A review of respondent's energy control procedures did not clearly and specifically outline the procedural steps for shutting down, isolating, blocking and securing machines to control energy while performing service and maintenance activities on equipment such as the Bliss 400 Ton mechanical press.

10. The respondent did not conduct annual inspections of the energy control procedures to insure that employees who are authorize to perform service and maintenance activities understood and utilized energy control procedures when performing service and maintenance activities on equipment such as the Bliss 400 Ton mechanical press.

11. From all the evidence, it appears that the respondent separated the employment function of machine operator from machine maintenance and die setters in a different way from the way the OSHA standards view them. Within the context of the way the respondent separated the function, the only authorized employees with regard to LOTO were the maintenance and die setter employees, who were trained on the LOTO standards.

12. The Dallas Industries coil feeder attached to the Bliss 400 Ton mechanical press was being serviced by Augustus McClure, who was inside the machine and observed by Mr. Calvery. However, no personal LOTO lock and tag was attached to the isolation device.

13. Mr. Calvery viewed and took pictures of three tractor trailers parked at the shipping/receiving dock, that was not equipped with a dock-lock system and without a tractor attached to any of the trailers, which showed that there were no chocks under the wheels of the trailers. This was in plain view of Mr. Calvery as he conducted his limited inspection.

14. From all the evidence, it is difficult to determine whether there was a violation of the standard which requires two separate hand trip devices on presses using two hand trip devices. The evidence seems to indicate that if a light curtain was being used on one side of the press, there would not be a need for a two hand trip device, since the light curtain can not be turned off unless the entire machine is shut down.

15. From all the evidence, it appears that the Bliss 400 Ton mechanical press does not use hydraulic power. If it did, then safety blocks should be used during die adjustments or repairs in accordance with LOTO procedures. This press will not move when properly locked out.

16. The respondent did not maintain a certification record of each inspection, maintenance and repair task either under a general component or a directed component of an inspection program with the detail of the person who performed the inspection and the pieces of equipment being inspected.

17. The respondent maintained some records with respect to training and inspections, but its records were incomplete and not in accordance with OSHA standards.

18. The violations noted above were admitted by different employees of the respondent who were interviewed by Mr. Calvery.

19. The respondent maintains that the injury to Mr. Griffin was caused by his use of his finger to line up the holes, instead of a tool, alleging isolated instance of employee misconduct, but that is an affirmative defense, not raised in the respondent's responses in this case, and not fully developed in the evidence.

20. All penalties were computed in accordance with the North Carolina Field Operations Manual.

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

CONCLUSIONS OF LAW

1. The foregoing Findings of Fact are incorporated 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 respondent violated the provisions of 29 CFR 1910.147(c)(4)(i), as alleged in Citation No. 1, Item 1a, and such violation was a serious violation of the standard.

4. The respondent violated the provisions of 29 CFR 1910.147(c)(4)(ii)(B), as alleged in Citation No. 1, Item 1b, and such violations was a serious violation of the standard.

5. The respondent violated the provisions of 29 CFR 1910.147(c)(6)(i), as alleged in Citation No. 1, Item 2, and such violations was a serious violation of the standard.

6. The respondent violated the provisions of 29 CFR 1910.147(c)(7)(i)(A), as alleged in Citation No. 1, Item 3a, and such violation was a serious violation of the standard.

7. The respondent violated the provisions of 29 CFR 1910.147(c)(7)(i)(B), as alleged in Citation No. 1, Item 3b, and such violation was a serious violation of the standard.

8. The respondent violated the provisions of 29 CFR 1910.147(f)(3)(ii)(D), as alleged in Citation No. 1, Item 4, and such violation was a serious violation of the standard.

9. The respondent violated the provisions of 29 CFR 1910.178(k)(1), as alleged in Citation No. 1, Item 5, and such violations was a serious violation of the standard.

10. The respondent did not violate the provisions of 29 CFR 1910.217(c)(3)(viii)(a), as alleged in Citation No. 1, Item 6.

11. The respondent did not violate the provisions of 29 CFR 1910.217(d)(9)(iv), as alleged in Citation No. 1, Item 7.

12. The respondent violated the provisions of 29 CFR 1910.217(e)(1)(i)(C), as alleged in Citation No. 2, Item 1a (Citation 1, Item 8a), and such violations was a non-serious violation of the standard.

13. The respondent violated the provisions of 29 CFR 1910.217(e)(1)(ii)(C), as alleged in Citation No. 2, Item 1b (Citation 1, Item 8b), and such violations was a non-serious violation of the standard.

Based on the forgoing Findings of Fact and Conclusion of Law, IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. The respondent has violated the provisions of 29 CFR 1910.147(c)(4)(i), which violation is affirmed as a serious violation of the standard, with a penalty of \$7,000.00.

2. The respondent has violated the provisions of 29 CFR 1910.147(c)(4)(ii)(B), which violation is affirmed as a serious violation of the standard, with a combined penalty with Citation 1, Item 1a.

3. The respondent has violated the provisions of 29 CFR 1910.147(c)(6)(i), which violation is affirmed as a serious violation of the standard, with a penalty of \$6,300.00.

4. The respondent has violated the provisions of 29 CFR 1910.147(c)(7)(i)(A), which violation is affirmed as a serious violation of the standard, with a penalty of \$6,300.00.

5. The respondent has violated the provisions of 29 CFR 1910.147(c)(7)(i)(B), which violation is affirmed as a serious violation of the standard, with a combined penalty with Citation 1, Item 3a.

6. The respondent has violated the provisions of 29 CFR 1910.147(f)(3)(ii)(D), which violation is affirmed as a serious violation of the standard, with a penalty of \$6,300.00.

7. Citation 1, Items 6 and 7 are dismissed.

8. The respondent has violated the provisions of 29 CFR 1910.217(e)(1)(i)(C), which violation is affirmed as a non-serious violation of the standard, with a penalty of \$1,200.00.

9. The respondent has violated the provisions of 29 CFR 1910.217(e)(1)(ii)(C), which violation is affirmed as a non-serious violation of the standard, with a penalty combined with Citation 2, Item 1a.

10. The respondent shall pay the total penalties of \$33,400.00 within ten (10) days of the filing date of this Order.

11. All violations not previously abated shall be immediately abated.

This 25th day of August, 2022.



RICHARD M. KOCH
HEARING EXAMINER

CERTIFICATE OF SERVICE

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

GERALD L. LISKA
MULLEN HOLLAND & COOPER
PO BOX 488
GASTONIA, NC 28053

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

STACEY A. PHIPPS
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.

THIS THE 26 DAY OF August 2022.



Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
1101 Mail Service Center
Raleigh, NC 27699-1101
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