

FILED

SEP 26 2022

BEFORE THE NORTH CAROLINA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

NC Occupational & Safety Health

RALEIGH, NORTH CAROLINA

COMMISSIONER OF LABOR OF)	DOCKET NO: 2020-6302
THE STATE OF NORTH CAROLINA)	
)	INSPECTION
Complainant,)	NO: 318186228
)	
v.)	CSHO ID: A2210
)	
GRUMA CORPORATION dba MISSION)	
FOODS US)	<u>FINAL ORDER</u>
<i>and its successors</i>)	
Respondent.)	

THIS CAUSE came on for hearing and was heard before the undersigned Laura J. Wetsch, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission, on September 22, 2022 pursuant to a Notice of Hearing. Rory Agan, Assistant Attorney General, North Carolina Department of Justice, appeared for the Complainant. Michael McKnight, Ogletree Deakins, 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 corporation, 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 Goldsboro, North Carolina. Respondent is in the business of making food

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 between December 31, 2019 and January 3, 2020, Cassandra Scott, an Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor, conducted an inspection of Respondent’s worksite located at 401 Gateway Drive in Goldsboro, North Carolina (the “Inspection”).

4. As a result of the Inspection, on June 12, 2020, Complainant issued the following Citation and Notification of Penalty (herein collectively referred to as the “Original Citation”):

Citation	Item	Standard	Type	Penalty
1	1a	1910.147(c)(4)(ii)(B)	Serious	\$7,000.00
1	1b	1910.147(c)(4)(ii)(C)	Serious	Grouped

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.

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 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:

- a. Respondent will pay the penalty of \$5,600.00 assessed in this matter on or before October 14, 2022 (payment is to be by check payable to North Carolina Department of Labor, OSHA Division (identifying Inspection No. 318186228)) and mailed to North Carolina Department of Labor, NC Department of Labor Budget & Management Division, Attn: Collections Division, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.
- b. Create and implement machine specific procedures for the Line 1 Cooling Conveyor at its Goldsboro facility;
- c. Retrain all employees who are likely to use the Line 1 Cooling Conveyor, as well as any new hires who are likely to use it, on the procedure created;
- d. Audit the procedure for cleaning the Line 1 Cooling Conveyor three (3) times per year for a period of two (2) years and retaining records for a period of two (2) years from the time of each audit. Such records shall be provided to the Department of Labor upon request during an inspection.

MOTIONS

Complainant moved to do the following (“Complainant’s Motion”):

- a. Reclassify and regroup the citations and associated penalties as follows for a new total balance of all penalties of \$5,600.00.

Citation	Item	Standard	Type	Penalty

1	1a	1910.147(c)(4)(ii)(B)	Non-Serious	\$5,600.00
1	1b	1926.147(c)(4)(ii)(C)	Non-Serious	Grouped

- b. Strike the following sentence from the AVD in both Citation Item 1a and 1b: “On December 26, 2019, one employee was performing preventative maintenance on the Line 1 Cooling Conveyor when his right index, middle and ring fingers became caught in the sprocket, resulting in a one-day hospitalization.”

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”):

- a. 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.

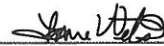
CONCLUSIONS OF LAW

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 \$5,600.00 in the manner set forth in the Stipulations.

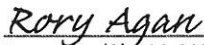
This the 22nd day of September, 2022.



Laura Wetsch (Sep 26, 2022 14:21 EDT)

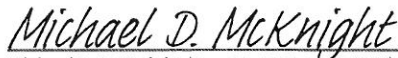
Laura J. Wetsch
Hearing Examiner

CONSENTED TO:



Rory Agan (Sep 26, 2022 14:02 EDT)

Rory Agan
Assistant Attorney General
NCDOJ-Labor Section
114 W. Edenton Street
Raleigh, North Carolina 27603



Michael D. McKnight (Sep 26, 2022 13:58 EDT)

Michael McKnight
Attorney for Respondent
Ogletree Deakins
8529 Six Fork Roads Forum IV, Suite 600
Raleigh, North Carolina 27615

CERTIFICATE OF SERVICE

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

MICHAEL D MCKNIGHT
OGLETREE DEAKINS
8529 SIX FORKS RD STE 600
RALEIGH NC 27615

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.

THIS THE 28 DAY OF September 2022.



Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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Raleigh, NC 27699-1101
TEL.: (919) 733-3589
NCOSHRC@labor.nc.gov