

FILED

SEP 23, 2024

BEFORE THE NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION RALEIGH, NORTH CAROLINA NC OSH Review Commission

COMMISSIONER OF LABOR FOR THE STATE OF NORTH CAROLINA Complainant, v. JN CARPENTRY, LLC and its successors Respondent. DOCKET NO: 2024 - 6658 INSPECTION NO: 318288701 CSHO ID: # E1150 ORDER REGARDING STATEMENT OF POSITION

A Notice of Default was issued to Respondent by the North Carolina Safety and Health Review Commission ("Review Commission") on August 26, 2024 for Respondent's failure to file a Statement of Employer's/Respondent's Position with the Review Commission. The Notice of Default expressly stated "Respondent is ORDERED to file its Statement of Position within five (5) days of receipt of this Order...Failure to timely comply with this Order will result in immediate dismissal of the Notice of Contest."

The Notice of Default was served by certified mail on Respondent on Tuesday, September 3, 2024. Respondent delivered to the Review Commission by e-mail its Statement of Position on Tuesday, September 10, 2024 and such Statement of Position was filed in the ordinary course of business by the Review Commission on Wednesday, September 11, 2024.

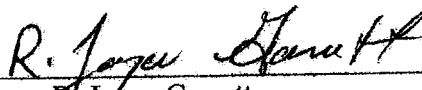
On Friday, September 13, 2024 Complainant notified the Review Commission of its objection to the Review Commission accepting the Respondent's Statement of Position as timely, stating "...the employer received it [Default Notice] on September 3, 2024 via certified mail which means the employer had until September 8, 2024 to respond".

Reference is made to Review Commission Rule .0104 COMPUTATION OF TIME "(a) In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation."

In accordance with the Review Commission Rule, the Statement of Position was delivered by Respondent for filing to the Review Commission "within five (5) days of receipt". Tuesday, September 3, Saturday, September 7 and Sunday, September 8 are excluded from calculating the 5 days period. The 5 day period included September 4th, 5th, 6th, 9th, and 10th. Respondent, who was unrepresented by counsel and appearing pro se, substantially complied with the time requirement regarding the delivery of the Statement of Position; the penalty of dismissing Respondent's Notice of Contest should not be imposed because the actual filing of the document by the Review Commission did not occur until September 11, 2024.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the delivery of Respondent's Statement of Position is substantially in accordance with the requirements of the Notice of Default and Respondent's Notice of Contest shall not be dismissed based on failure to provide Respondent's Statement of Position. Complainant's objection is overruled.

This 23rd. day of September, 2024.



R. Joyce Garrett
Hearing Examiner

CERTIFICATE OF SERVICE

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

BRIAN NAVES
JN CARPENTRY, LLC
509 COPLEY LANE
SILVER SPRINGS, MD 20904

By depositing a copy of the same in the United States Mail, by 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

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.

THIS THE 25 DAY OF September 2024.

PAUL E. SMITH
CHAIRMAN



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