

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
93CVS04343

WEEKS CONSTRUCTION COMPANY,

OSHANC NO. 90-1767

Petitioner,

ORDER

v.

HARRY E. PAYNE, JR., COMMISSIONER
OF LABOR OF NORTH CAROLINA,

Respondent.

This matter was heard on 6 January 1995, during the 3 January 1995 Civil Session of Wake County Superior Court. This matter was heard upon the Petitioner's petition for judicial review of a final agency decision rendered by the North Carolina Safety & Health Review Board pursuant to N.C.G.S. §95-141 and §150B-43.

The Court, after reviewing the record in this case, and upon consideration of the exceptions raised by the Petitioner and the briefs submitted and the arguments made by the parties, finds and concludes:

1. On 27 April 1990, the North Carolina Department of Labor, Occupational Safety and Health Division issued one citation to the Petitioner. Said citation alleged wilful violations of 29 CFR 1926.21(b)(2) for Petitioner's failure to train employees in the recognition and avoidance of work site hazards and 29 CFR 1926.950(c)(1) for allowing its employee to approach within 24 inches of an energized line without being properly isolated or insulated. Each alleged violation carried a penalty of Eight Thousand Dollars for a total penalty of Sixteen Thousand (\$16,000.00) Dollars.
2. Petitioner timely filed its notice of contest and requested a hearing before the Safety & Health Review Board. A hearing was subsequently held before the Honorable Richard M. Koch, Hearing Examiner, Safety & Health Review Board who heard evidence and made findings of fact and conclusions of law and, on 17 January 1992, entered his order dismissing the portion of the citation alleging violation of 29 CFR 1926.21(b)(2) and sustaining that portion of the citation alleging a wilful violation of 29 CFR 1926.950(c)(1) and a penalty of \$8,000.00.
3. Petitioner then filed a petition for review to the Safety & Health Review Board and, on 7 April 1993, the Safety & Health Review Board issued its order affirming the Hearing Examiner's findings of fact, conclusions of law and the penalty assessment.
4. On 6 May 1993, Petitioner timely filed its petition for judicial review.
5. This Court has conducted a de novo review of the record and finds that substantial rights of Petitioner have been prejudiced because the Safety & Health Review Board's conclusion of law that the alleged violation of 29 CFR 1926.950(c)(1) was wilful is not supported by its findings of fact. The Court, however, finds that the record supports the conclusion of law that the alleged violation of 29 CFR 1926.950(c)(1) was serious.

THEREFORE, IT IS ORDERED ADJUDGED AND DECREED, that the Safety & Health Review Board's decision in this matter is modified pursuant to N.C.G.S. §150B-51(b) to provide that the alleged violation of 29 CFR 1926.950(c)(i) was serious rather than a wilful, and this matter is remanded to the Safety & Health Review Board for proper calculation of the penalty in light of the modification to the Safety & Health Review Board's Order.

This the 11th day of January, 1995.

The Honorable Jack Thompson