

STATE OF NORTH CAROLINA
COUNTY OF ROCKINGHAM

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
95CVS1247

YATES CONSTRUCTION COMPANY, INC.,

OSHANC NO. 93-2967

Petitioner,

ORDER

v.

COMMISSIONER OF LABOR FOR
THE STATE OF NORTH CAROLINA,

Respondent.

THIS MATTER came on for hearing before the undersigned Superior Court Judge at the January 22, 1996 Session of Rockingham County Superior Court upon Petition for Judicial Review filed by Petitioner pursuant to G.S. 150B-45 seeking review of a final administrative agency decision entered August 8, 1995 by the Safety and Health Review Board of North Carolina. The Court, after careful consideration of the Petition For Review, the Decision of the Review Board, transcript of evidence and the arguments and briefs of counsel, finds the following:

1. This case was initiated by Citations issued October 4, 1993 to Petitioner by the Commissioner of Labor pursuant to G.S 95-137. The Citations were issued for violations of specific safety regulations contained in 29 CFR 1926, the construction standards. Petitioner timely contested the Citations and proposed penalties.
2. On February 15, 1994, a hearing was held before Hearing Examiner Carroll D. Tulle, who heard evidence, made findings of fact and entered an Order filed with the Review Board on July 15, 1994, which affirmed the Citations as to the alleged violations but reduced the penalty.
3. On August 8, 1995, the Review Board affirmed findings of the hearing examiner as to the violations but vacated the reduction of the penalty and affirmed the penalty originally assessed by the Respondent. Petitioner has sought review in this Court.
4. This court has conducted a whole record test and from the matters of record concludes:
 - (a) There is substantial and ample evidence, upon review of the entire record, to support the Review Board's finding and conclusion that Respondent violated the specific 29 CPR 1926 Standards for which it was cited;
 - (b) There is sufficient competent evidence of record to support the Review Board's findings of fact including those facts found by the Hearing Examiner which were adopted by the Review Board;
 - (c) Based upon such findings of fact the Review Board made correct and proper conclusions of law with regard to these violations;
 - (d) There was no violation of any statutory or constitutional right of the Petitioner and the Review Board did not act in excess of its statutory authority or jurisdiction;
 - (e) The Review Board's decision was not made upon improper procedure and was not affected by any error of law;
 - (f) The Review Board's decision is supported by substantial competent evidence in view of the entire record as a whole; and, as such,

(g) The Review Board's decision is not arbitrary or capricious.

5. This decision is rendered in Chambers and out of session by the consent of the parties given in open court through their counsel.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED, that the Decision of the Review Board is affirmed in all respects.

This the 13 day of Feb, 1996.

C. Preston Cornelius
JUDGE PRESIDING