

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
96CVS07748

LLOYD T. WILSON,  
Employee, Third Party

OSHANC NO. 94-3159

**ORDER**

v.

COMMISSIONER OF LABOR FOR  
THE STATE OF NORTH CAROLINA

Petitioner,

v.

GEORGIA-PACIFIC CORPORATION

Petitioner.

This matter came on for hearing before the undersigned Superior Court Judge of Wake County Superior Court on July 2, 1997, upon Petition for Judicial Review and, in the Alternative, for Writ of Certiorari filed by Petitioner the Commissioner of Labor of North Carolina, pursuant to G.S. § 150B-45 and G.S. § 1-269, and upon the Petition for Review filed by Petitioner Georgia-Pacific Corporation pursuant to GS § 150B-45 seeking review of a final decision of the Safety and Health Review Board entered on July 3, 1996. Appearing before the undersigned were Assistant Attorneys General Linda Kimbell and H. Alan Pell for Petitioner the Commissioner of Labor; Charles H. Morgan and William H. Weatherspoon, Jr., for Petitioner Georgia-Pacific Corporation; and J. Philip Allen, Associate Attorney General for the Safety and Health Review Board. The Court, after careful consideration of the entire record, including the Petitions for Review, the Order of the Safety and Health Review Board, and the briefs and oral argument of counsel, finds the following:

1. This matter was initiated by a Citation, comprising Items 1a and 1b, issued to Petitioner Georgia-Pacific Corporation on August 31, 1994, by Petitioner the Commissioner of Labor pursuant to G.S. 95-137. An amended citation was issued by the Department of Labor on November 11, 1994, which withdrew Item 1b of Citation Number One.
2. Georgia-Pacific Corporation contested the amended citation on November 28, 1994, and the contestment was filed with the Safety and Health Review Board.
3. The Commissioner of Labor filed a Notice of Withdrawal of Citation with the Safety and Health Review Board on February 6, 1995.
4. On February 24, 1995, Mr. Lloyd Wilson sent a letter to the Safety and Health Review Board inquiring about the status of the Citation issued to Georgia-Pacific Corporation.
5. On July 3, 1996, the Safety and Health Review Board issued an Order which reinstated Citation Number One, Item 1a and ordered the case set for hearing.
6. Georgia-Pacific Corporation has represented to the Commissioner of Labor, the Safety and Health Review Board and this Court that it has provided Mr. Lloyd Wilson with copies of all the existing medical records which were at issue in Citation Number One, Item 1a and has also made the originals of these records available to Mr. Wilson for inspection and copying by him.

Based on the facts and applicable law, this Court concludes:

- (1) The Commissioner of Labor has sole prosecutorial discretion under the Occupational Safety and Health Act;
- (2) The Safety and Health Review Board, as an adjudicatory body, had no jurisdiction over the OSHA citation at issue once it was withdrawn by the Commissioner of Labor; and, as such,
- (3) The Safety and Health Review Board acted in excess of its statutory authority and jurisdiction.>

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

IT IS THEREFORE ORDERED, ADJUDGED and DECREED THAT

- (1) The Petitions for Review are granted;
- (2) The Decision of the Safety and Health Review Board reinstating Citation Number One, Item 1a is reversed;
- (3) Pursuant to the Court's discretion to so order, Georgia-Pacific Corporation shall again send to Mr. Lloyd Wilson copies of all medical records related to Mr. Wilson by certified mail, return receipt requested. Georgia-Pacific Corporation shall make the originals of those records available to Mr. Lloyd Wilson for his inspection and copying at 4900 Falls of Neuse Road, Raleigh, North Carolina 27619, between 10:00 AM and 4:00 PM during the fifteen (15) working days following the entry of this Order. The medical records that are the subject of this paragraph are limited to: (i) two films of Mr. Lloyd Wilson's May 15, 1979 chest X-ray; (ii) a two-sided medical report noting the results of the 1979 X-ray; and (iii) a carbon copy of Mr. Lloyd Wilson's September 25, 1978 pre-employment physical; and
- (4) The case is dismissed.

This the 25 day of July, 1997.

Gordon Battle  
JUDGE Presiding