

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
96CVS12431

STICK PROOF COMPANY

OSHANC NO. 95-3203

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 June 9, 1997 session of Wake 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 November 4, 1996 by the Safety and Health Review Board of North Carolina. The Court, after careful consideration of the entire record, including the Petition For Review, the Decision of the Review Board, the transcript of evidence and the arguments and briefs of counsel finds the following:

1. This case was initiated by Citations issued October 22, 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 1910, the general industry standards. Petitioner timely contested the Citations and proposed penalties.
2. On June 16 and June 21, 1995, a hearing was held before Hearing Examiner Margaret Morgan who heard evidence, made Findings of Fact and entered an Order filed with the Review Board on July 26, 1995, which affirmed the Citations and penalties as to the alleged violations.
3. Respondent appealed the decision to the Safety and Health Review Board in a petition for review filed on August 25, 1995.
4. A hearing was held before the full Board on April 26, 1996, at which both sides presented oral argument.
5. On November 4, 1996, the Review Board affirmed the decision of the Hearing Examiner.
6. Petitioner timely appealed for judicial review.
7. This court, after reviewing the entire record and hearing arguments by the parties, 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 CFR 1910 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.

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

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

This the 18th day of June, 1997.

ROBERT L. FARMER
JUDGE PRESIDING