

STATE OF NORTH CAROLINA

COUNTY OF WAKE

DILLARD-EASTLAND MALL
STORE 451,

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
00-CVS-3350

Petitioner-Appellant

vs.

COMMISSIONER OF LABOR OF THE
STATE OF NORTH CAROLINA

ORDER,

Respondent-Appellee

THIS CAUSE came on to be heard and was heard before the undersigned Superior Court Judge pursuant to a Petition for Review of the North Carolina Safety and Health Review Board's Decision filed on July 30, 1999. A hearing before the undersigned was held on January 26, 2001, where counsel for the parties were provided an opportunity to present argument in support of their respective positions. After reviewing the record in this case and applying the "whole record" test, the Court determines that there is insufficient evidence in the record as a whole to support the findings and conclusions reached by the Safety and Health Review Board of North Carolina.

The Court bases its decision upon the fact that all of the evidence presented by the Commissioner of Labor consisted of the testimony of its Safety Compliance Officer who based his conclusion upon the hearsay testimony of two employees who did not appear and testify. Petitioner, Dillard's, presented testimony on the nature of the tasks performed by the employees and the likelihood that any employee would be exposed to a hazard to the foot while unloading trailers of merchandise. This evidence demonstrated the lack of any need to provide safety toe footwear during the unloading operation. Moreover, this lack of need was further supported by Petitioner's evidence that it had not sustained any foot injuries, let alone injuries to the toe, for its employees while engaged in unloading boxes from the trailers. Further, Dillard's provided testimony from an expert witness that under the circumstances described, there was no need for safety toe footwear. Applying the whole record test to this case demonstrates there is insufficient evidence to establish the possibility of an accident. Accordingly, the evidence is insufficient to support the findings and conclusions of the Safety and Health Review Board.

Based upon the foregoing, IT IS HEREBY ORDERED that the Decision of the Safety and Health Review Board be reversed,

SO ORDERED.

This the 5th day of March, 2001.

David Labarre
Superior Court Judge