

**BEFORE THE SAFETY AND HEALTH REVIEW BOARD
OF NORTH CAROLINA**

COMMISSIONER OF LABOR OF
THE STATE OF NORTH CAROLINA,

COMPLAINANT,

v.

ENTERPRISE NETWORK SERVICES, INC

RESPONDENT.

DOCKET NO. OSHANC 98-3722
OSHA INSPECTION NO. 302125299
CSHO ID NO. H4328

ORDER REMANDING CASE

PER CURIAM

Vacated and remanded.

This appeal was decided at the Review Board Quarterly Meeting on December 14, 1999 at or about 10:00 A.M. on the 14th day of December, 1999 in room 124 of the Old YMCA Building located at 217 West Jones Street, Raleigh, North Carolina by J. B. Kelly, Chairman, Robin E. Hudson and Henry M. Whitesides, Members of the North Carolina Safety and Health Review Board.

This matter is before the Board on Complainant's Petition for Review, Request to Present Evidence and Request for Expedited Hearing and Respondent's Motion to Dismiss and many other Motions. This matter came on originally for hearing before the Honorable Carroll Tuttle on May 13, 1999, at the Old YWCA Building in Raleigh, North Carolina. The state was not allowed to put on any evidence and no testimony was presented at the hearing. Judge Tuttle issued an order dated July 28, 1999 based solely upon the exhibits, the documents and the pleadings in the file, said Order allowed Respondent's Motion to Dismiss for lack of jurisdiction over Respondent, denied Complainant's Motion to Amend and dismissed the Citations.

The Board has decided on the basis of the briefs that no oral argument is necessary that the Hearing Examiner committed an abuse of discretion and an error of law in finding a lack of jurisdiction without the taking of any evidence and his findings of fact therefore have no basis in the evidence and his Conclusions of Law were therefore erroneous. For this reason his Order in this matter is vacated and the case is to be remanded as set out below. Our decision to remand the case renders the Respondent's Motion to Dismiss before the full Board and his other Motions before the full Board moot.

ORDER

For the reason stated herein, the Review Board hereby **ORDERS** that the Hearing Examiner's Order dated July 28, 1999 in this cause be, and hereby is, **VACATED** and the case is **REMANDED** to be heard by a different Hearing Examiner on the first available date on the merits with the taking of evidence on all the issues including the Complainant's Motion to Amend and the Respondent's Motion to Dismiss for Lack of Jurisdiction.

This the 24th day of May, 2000.

JB KELLY, CHAIRMAN

ROBIN E. HUDSON, MEMBER

HENRY M. WHITESIDES, MEMBER