

THE STATE EX REL. WORLD STAMPING AND MANUFACTURING COMPANY v.

INDUSTRIAL COMMISSION OF OHIO ET AL.

[Cite as *State ex rel. World Stamping & Mfg. Co. v. Indus. Comm.* (1999), \_\_\_\_

Ohio St.3d \_\_\_\_.]

*Workers' compensation — Violation of specific safety requirement — Ohio Adm.Code 4121:1-5-10(C)(3)(a) — Failure to have front door guard on foot pedal of punch press — Industrial Commission does not abuse its discretion in finding that lack of a front foot pedal cover constituted a VSSR, when.*

(No. 96-1991 — Submitted January 13, 1999 — Decided February 10, 1999.)

IN MANDAMUS.

Respondent-claimant, John Suech, was hired by relator World Stamping and Manufacturing Company in June 1993. On September 29, 1993, claimant was assigned to one of the Bliss punch presses. Some of the presses at the company, including claimant's press, were activated by a foot pedal. These foot pedals were not permanently affixed to the machines but could instead be interchanged among the other similarly activated presses. Each foot pedal, at a minimum, was enclosed on the top, back, and sides to prevent accidental activation. Most of the foot pedals also had a spring-operated cover on the front.

On the date of injury, claimant reached into the Bliss punch press to dislodge a part. While doing so, claimant's foot slipped and the press cycled, severely injuring claimant's hand. Claimant stated that the pedal enclosure had no front cover.

After his workers' compensation claim was allowed, claimant sought additional compensation, alleging that World Stamping had violated a specific

safety requirement (“VSSR”), Ohio Adm.Code 4121:1-5-10(C)(3)(a), which states:

“(C) Mechanical power press guarding.

“ \* \* \*

“(3) Foot pedals (treadle).

“(a) Pedal mechanism.

“The pedal mechanism shall be protected to prevent unintended operation from falling or moving objects or by accidental stepping onto the pedal.”

A commission staff hearing officer granted claimant’s application, finding that:

“[T]he claimant’s injury was the result of the cycling of the press via the foot pedal which was accidentally stepped on by claimant due to the foot pedal not having a front door (flap) to encase the pedal as required by 4121:1-5-10(c)(3)(a)

\* \* \*.

“ \* \* \*

“[S]ection 4121:1-5-10(c)(3)(a) which states that ‘the pedal mechanism (of a mechanical power press) shall be protected to prevent unintended operation from falling or moving objects or by accidental stepping onto the pedal.’ \* \* \* [T]he machine in question was, in fact, a mechanical power press per claimant’s affidavit, the affidavit of Richard Harkness and the BWC investigator’s report. Second, the claimant has alleged, as recorded by photos as labeled Exhibit 2b, that the pedal in question did not have a front (spring-loaded) door (flap) guard to encase the pedal, while the employer has alleged, as recorded by photos as labeled Exhibit 2a, that the pedal in question did have a front door guard. The staff hearing officer notes that the claimant’s photos were taken on or about 11/29/93, while the investigator’s photos were not taken until 11/16/94. Furthermore, the

numerous statements, affidavits and testimony provided by Viola Armentrout, John P. Benko, and John R. Benko all demonstrate that these individuals did not know/remember whether or not the foot pedal had, in fact, a front door guard at the time of the accident. Therefore, based on the totality of evidence presented, the Staff Hearing Officer finds that the foot pedal in question did not have a front door guard to prevent it from being accidentally activated. Finally, pursuant to *State ex rel. Jeep Corp. v. Indus. Comm.* (1989), 42 Ohio St.3d 83 [537 N.E.2d 215], this failure to have a front door guard on the foot pedal is found to be a violation of the code section cited above. This order is based on the affidavit of the claimant, the affidavit of Ben Pandurevic, the affidavit of Richard Harkness and the photos contained in Exhibit 2b.”

Rehearing was denied.

This cause is now before this court as an original action in mandamus seeking to overturn the commission’s order.

---

*Kolick & Kondzer, Daniel J. Kolick and John P. Desimone, for relator.*

*Betty D. Montgomery, Attorney General, and Gerald H. Waterman, Assistant Attorney General, for respondent Industrial Commission.*

*Ben Pandurevic, for respondent Jon Suech.*

---

***Per Curiam.*** A single specific safety requirement is at issue — Ohio Adm.Code 4121:1-5-10(C)(3)(a). The commission found a violation of this safety requirement, and we, in turn, find no abuse of the commission’s discretion.

Claimant’s testimony, various photographs, and finally the affidavit of Dr. Richard E. Harkness, a registered professional engineer who inspected the accident site and the claimant’s press, indicate that the foot pedal had no front

cover. There is thus “some evidence” supporting the commission’s determination that the front of the foot pedal was not protected. The presence of contrary evidence is immaterial given the commission’s role as the ultimate finder of fact. As stated in *State ex rel. Mitchell v. Robbins & Myers, Inc.* (1984), 6 Ohio St.3d 481, 6 OBR 531, 453 N.E.2d 721, we will not reweigh evidence.

Having so found, we also find pursuant to *State ex rel. Jeep Corp. v. Indus. Comm.* (1989), 42 Ohio St.3d 83, 537 N.E.2d 215, that the commission did not abuse its discretion in finding that the lack of a front foot pedal cover constituted a VSSR.

Accordingly, the writ of mandamus is denied.

*Writ denied.*

MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY, PFEIFER, COOK and LUNDBERG STRATTON, JJ., concur.