

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 474
HOUSE BILL 187

AN ACT REQUIRING CERTAIN DETAIL IN THE DECISIONS AND REPORTS OF
THE OSHA REVIEW BOARD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-135(i) reads as rewritten:

"(i) A hearing examiner appointed by the chairman of the Board shall hear, and make a determination upon, any proceeding instituted before the Board and may hear any motion in connection therewith, assigned to ~~such the~~ hearing examiner, and shall make a report of ~~any such the~~ determination which constitutes ~~his the~~ hearing examiner's final disposition of the proceedings. A copy of the report of the hearing examiner shall be furnished to the Director and all interested parties involved in any appeal or any proceeding before the hearing examiner for ~~his the~~ hearing examiner's determination. The report of the hearing examiner shall become the final order of the Board 30 days from the date of ~~said the~~ report as determined by the hearing examiner, unless within ~~such the~~ 30-day period any member of the Board had directed that ~~such the~~ report shall be reviewed by the entire Board as a whole. Upon application for review of any report or determination of a hearing examiner, before the 30-day period expires, the Board shall schedule the matter for hearing, on the record, except the Board may allow the introduction of newly discovered evidence, or in its discretion the taking of further evidence upon any question or issue. All interested parties to the original hearing shall be notified of the date, time and place of ~~such the~~ hearing and shall be allowed to appear in person or by attorney at ~~such the~~ hearing. Upon review of ~~said the~~ report and determination by the hearing examiner the Board may adopt, modify or vacate the report of the hearing examiner and notify the interested parties. The report of the hearing examiner, and the report, decision, or determination of the Board upon review shall be in writing and shall include findings of fact, conclusions of law, and the reasons or bases for them, on all the material issues of fact, law, or discretion presented on the record. The report, decision or determination of the Board upon review shall be final unless further appeal is made to the courts under the provisions of Chapter 150B of the General Statutes, as amended, entitled: 'Judicial Review of Decisions of Certain Administrative Agencies.'"

Sec. 2. G.S. 95-138(a) reads as rewritten:

"(a) Any employer who willfully or repeatedly violates the requirements of this Article, any standard, rule or order promulgated pursuant to this Article, or regulations prescribed pursuant to this Article, may upon the recommendation of the Director to the Commissioner be assessed by the Commissioner a civil penalty of not more than

seventy thousand dollars (\$70,000) and not less than five thousand dollars (\$5,000) for each willful violation. Any employer who has received a citation for a serious violation of the requirements of this Article or any standard, rule, or order promulgated under this Article or of any regulation prescribed pursuant to this Article, shall be assessed by the Commissioner a civil penalty of up to seven thousand dollars (\$7,000) for each ~~such~~ serious violation. If the violation is adjudged not to be of a serious nature, then the employer may be assessed a civil penalty of up to seven thousand dollars (\$7,000) for each ~~such~~ nonserious violation. Any employer who fails to correct a violation for which a citation has been issued under this Article within the period allowed for its correction (which period shall not begin to run until the date of the final order of the Board in the case of any appeal proceedings in this Article initiated by the employer in good faith and not solely for the delay or avoidance of penalties), may be assessed a civil penalty of not more than seven thousand dollars (\$7,000). ~~Such~~ The assessment shall be made to apply to each day during which ~~such~~ the failure or violation continues. Any employer who violates any of the posting requirements, as prescribed under the provision of this Article, shall be assessed a civil penalty of not more than seven thousand dollars (\$7,000) for ~~such~~ the violation. The Commissioner upon recommendation of the Director, or the Board in case of an appeal, shall have authority to assess all civil penalties provided by this Article, giving due consideration to the appropriateness of the penalty with respect to the following factors:

- (1) Size of the business of the employer being charged,
- (2) The gravity of the violation,
- (3) The good faith of the ~~employer~~ employer, and
- (4) The record of previous ~~violations~~ violations; provided that for purposes of determining repeat violations, only the record within the previous three years is applicable.

The Commissioner shall adopt uniform standards which the Commissioner, the Board, and the hearing examiner shall apply when considering the four factors for determining appropriateness of the penalty. The report of the hearing examiner and the report, decision, or determination of the Board on appeal shall specify the standards applied in determining the reduction or affirmation of the penalty assessed by the Commissioner."

Sec. 3. This act is effective upon ratification and applies to citations issued on or after that date.

In the General Assembly read three times and ratified this the 23rd day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives