

STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT
Occupational Health and Safety Bureau
525 Camino de los Marquez
P. O. Box 26110
Santa Fe, New Mexico 87502-6110

Inspection Number: 115140857
Inspection Dates: 08/24/94 - 08/24/94
Issuance Date: 01/11/95



Citation and Notification of Penalty

Company Name: Allsup's Convenience Store #58
Inspection Site: 2300 South First, Tucumcari, NM 88401

Citation 1 Item 1 Type of Violation: **Serious**

Section 50-9-5(A) NMSA 1978 (New Mexico Occupational Health and Safety Act): The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to:

The store management provided employees with a personal alarm device (Line Air Corp.), to carry on their person at all times while on duty. Employees have notified management that due to too many false alarms they discontinued wearing them. By not using the devices employees were then exposed to the possibility of assault without any means of summoning help. Among other methods, one feasible and acceptable method of abatement is to provide and ensure use of a personal silent alarm device that works properly without defect.

Date By Which Violation Must be Abated:

01/24/95

Proposed Penalty:

Karen A. Wade

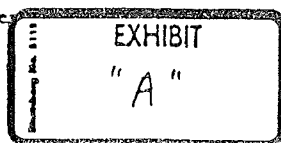
Karen Garcia Wade
Program Manager

PLTF 002007

See pages 1 through 7 of this Citation and Notification of Penalty

employer and employee rights and responsibilities.

Citation and Notification of Penalty



OSHA-2 (Rev. 6/93)

95 JAN 12 AM 11:38

To: New Mexico Environment Department
Donald Rideout Environmental Scientist
P.O. Box 26110
Santa Fe, New Mexico 87502

01-04-95

From: The Employees of Allsup's #058
2300 S. 1st St.
Tucumcari, Nm 88401

Would you please keep a copy of this on file.

We have sent this letter of concern to the Allsup's Personnel Office and would like this to be on file for future reference. We hope to hear from the Allsup's in the near future regarding this matter.

Thank you for your time.

(cc) Sincerely, the Employees of Allsup's #058

OSHA.WPS

To: Allsup's Personnel
From: Employees of Allsup's #058

01-0 3

We the employees of Allsup's #58 in Tucumcari, New Mexico are concerned for our safety as a result of the MURDER that occurred in our store on August 18, 1994. One Female clerk was working the graveyard that night. Since that night the only thing done to make the store safer for the employees was that we had two people working the graveyard or should we say part of it since, the extra coverage was cut down after 3 weeks to 12 am to 5 am when the District Manager in a meeting asked why we were over allocated hours at the store. He said to ween the people off of the double coverage. On December 2nd the District Manager called and said to stop all double coverage. At 35 hours per week double coverage on the graveyard it would cost Allsup's \$9100.00 per year in additional wages for this store. We feel that is a very low cost to keep the employees safe and isn't a human life worth considerably more than that?

Nothing has been done to change policy or make the stores safer since this incident. Mark Allsup indicated in a statement to the Amarillo Globe Times that perhaps lowering the amount of money kept in the registers at that time of night to \$50.00 would help. Since it looked like the KILLER in the incident here committed the act out of fear of being recognized by the person working and then took the money this would not have helped. Since the incident the only people that have shown any real concern for our safety has been the Area Supervisor and our regular customers. Our Supervisor has let us double cover as long as he could and talked to us about things that could keep us safer within the confines of working within the Allsup's system. None of the Allsup's have mentioned there regrets over the incident yone in the store to date. It seems to us that they are only concerned about the amount of money it has cost them or will cost them to date and not what it would cost to make the store safer. It has probably cost them over \$100,000.00 to date for the workmen's comp settlement and lost income from the store being closed and now the on going cost of less sales because the public does not feel safe. The public often ask if they have added cameras or done anything to make the store safer and we could only say that we had two people on the graveyard. Now we can't say that since we have lost that safety net.

The old Town and Country (Conway Oil now) closes at midnight and opens at 5:30 or 6:00 am since the incident because they do not feel the sales they have at that time of night warrants the risk of human life. To date they have not had any damage to the building by being closed. The TNT in Logan now closes at Midnight because of the same sales to risk ratio. In Tucumcari the Circle K has cameras and most times has two people working. We now have one person working in a town that has had 4 MURDERS in 1994. The other stores that stay open 24 hours a day have two or more people working the graveyard.

we were not made aware that a murderer was going down the interstate killing female clerks that worked the midnight shift alone and robbing the store as his MO until the incident. Then we had the two young men that were killing people and taking their cars passed through Tucumcari and were captured in Santa Fe. Not to mention the incident here was thought after the initial investigation to be a local man that they could not pickup for several weeks. The people working in the Interstate stores are at a different risk factor than your small town stores and allowances should be made to give them more protection. The Interstate killer is still loose, there was a murder at a truckstop in Vega, Tx and the killings that have happened in Santa Fe and Albuquerque, Nm. The trend seems to be large towns and Interstate highway stores.

We feel that something should be and could be done to make the stores safer other than saying that we might keep less money in the registers. It is becoming increasingly hard to find people to work the graveyard and to find people to work in the store period. If they were closed from 12 to 5 am with a person staying in the store to do the work that needs to be done it would keep the stores clean and it would keep the people safe and the store guarded and would make it obvious to the Police and Area Supervisor something is wrong if they see someone come out of the store during this closed time of night. It would not cost the company much in sales since the customer count during these 5 hours and sales are small. It could and probably would save the company inventory loses and most of all the loss of a life.

PLTF 002015

We are having a real concern over how much respect does the company have for the safety and lives of it's employees. We then find out that they value or are planning on valuing some more than others. An example is that they are planning on hiring security guards in Santa Fe from 9:00 P.M. until 5:00 A.M. to cut down on employee theft, robberies, and to make it where people feel safe in the store so they could possibly have people to work the stores on the graveyard shift. We are concerned because we do not want to see more young children be left without a parent or a person to lose their life before they can become parents. Is the DOLLAR more important than a life.

We would like to think that the company cares about us enough to give us some added security. How many more people must go through a robbery or death to make it clear that the graveyard is a dangerous shift and getting more dangerous all the time.

On December 29th of 1994 at about 3:00 A.M. the store here in Tucumcari was entered by a man with a knife and Robbed of \$50.00. That is a low sum of money and we were lucky there were no injuries. That is 25 days after we stopped having double coverage on the graveyard for 5 hours a night. This time the cost was low but will we be as lucky next time? The Police asked why we didn't have video cameras and all that could be said is "We don't know". "We guess we are not important enough to the owners or the company". We wonder how the other people in the stores feel since we understand that there have been several robberies in Clovis in the past few months. The manager in ...ose was lucky she was not killed when some young men attempted to rob the store and one of them nearly beat her to death and if it hadn't been for a truck driver coming in the store he may killed her. If it had not been for a Sheriff's Deputy and the Area Supervisor locating and apprehending them they would have gotten away with it. They were caught on the road 23 miles from Tucumcari which could have been the next place they robbed or attempted to rob since, there was only one person working the graveyard. A camera would have shown who they were even if Juan Nell could not I.D. them. It seems we are considered a replaceable commodity rather than a valuable asset that is to be protected and appreciated. Which brings us to the fact that we have never heard anything as a matter of condolence or appreciation for going onward after the MURDER that took place in this store from any one other than the District Manager and Supervisor.

An investment in safety would have a good return to the company in less loss of property such as inventory, and loss from injuries and death of employees. It would also save in the number of people we have to screen, hire, and train, because we would have people that would stay if they weren't pressured for shortages they didn't cause and felt safe with a company that was actually concerned about them.

...ould be nice to have more encouragement from the home office instead of discouragement and having to defend our actions and selves to the office on a complaint that is made by someone that will not leave their name or because the complaint was made by a past employee or person that has a personnel grudge and is trying to cause a problem for the manager or another employee. Much time and effort is wasted on these written responses to the allegations when the supervisors and managers know there is nothing valid about the complaint. But little time is given to consider store safety of the employees.

Once again the District Manager has given us permission to double cover the graveyard for 5 hours but we do not have the people to do this so we are bringing someone in during the evening for 2 to 3 hours a day to work the walk-in and bag ice to keep the graveyard person in front of the store close to the check stand in order to be able to see who is coming in and from where they are coming. We hope this will keep them safe. We hope that we will be allowed to continue this safety measure, but are afraid that we will have to stop this as soon as the cost in hours is noticed just as it was with the double coverage of the past. We would like to see the home office people or part of them to work in a store to see what they are asking people to do and see if they feel safe working a graveyard by themselves. This might give them a new perspective on the safety of the stores at night.

Respectfully,
The Employees of Allsup's #058



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A MURDER, A CITATION, A DISMISSAL FAMILYS LAWYER QUESTIONS STATES DISMISSAL OF SAFETY CITATION IN WAKE OF ALLSUPS CLERKS KILLING

Ben Neary (Karen Peterson contributed to this report). The Santa Fe New Mexican. Santa Fe, N.M.: Oct 22, 1995. pg. A.1

- Abstract (Document Summary)

Allsup's was quick to react. While the Clovis-based company appealed the citation through official channels to a state review commission, a company lawyer also personally contacted Republican Lt. Gov. Walter Bradley himself a Clovis resident and asked for help.

Warren F. Frost of Clovis, lawyer for [Elizabeth Williams] estate, says Bradley's involvement in the case shows that workplace safety takes a back seat to private profits in this state administration. Frost said Williams estate has no litigation pending against the Allsup's company.

Asked about Bradley's Clovis background, Allsup's lawyer [Ted L. Hartley] responded, It was just a matter of coincidence, I suppose. If he had been a lieutenant governor that I didn't know at all, I might have thought a little bit differently about calling him. I just happen to know Lieutenant Governor Bradley.

Full Text (1679 words)

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In the early hours of Aug. 18, 1994, an unknown murderer walked into Allsup's Store No. 58 in Tucumcari, escorted the lone clerk into a walk-in cooler and killed her with a gunshot to the back of the head.

Elizabeth Williams, a 33-year-old mother of three, had worked at the store less than six weeks when she was killed.

In response to Williams death, New Mexico's Occupational Health and Safety Bureau this January issued a ground-breaking, \$3,250 citation against Allsup's Convenience Stores, Inc., claiming the company failed to provide a safe workplace. The store had been robbed before.

It was the first citation regarding workplace violence ever issued in New Mexico.

Allsup's was quick to react. While the Clovis-based company appealed the citation through official channels to a state review commission, a company lawyer also personally contacted Republican Lt. Gov. Walter Bradley himself a Clovis resident and asked for help.

In response, Bradley's staff in March summoned Deputy Environment Secretary Edgar T. Thornton III and other high-ranking department officials to Bradley's office at the Roundhouse and

PLTF 001982

questioned them about the Allsups citation.

Three months later, the Environment Department unconditionally dismissed the citation.

Warren F. Frost of Clovis, lawyer for Williams estate, says Bradley's involvement in the case shows that workplace safety takes a back seat to private profits in this state administration. Frost said Williams estate has no litigation pending against the Allsups company.

Gov. Gary Johnson's position on workplace safety also has come under question. A jury this year ordered his private construction company, Big J Enterprises Inc., to pay more than \$500,000 to a worker who claimed he had been fired for raising workplace safety concerns. The company has appealed the judgment.

And this month, in response to funding cuts that Johnson ordered, the safety bureau disconnected a statewide workplace safety hotline for reporting suspected violations.

Meanwhile, the state official who signed the Allsups citation says there's no doubt it received special attention.

There were decisions made actually above my head and above the bureau chiefs head that it was not appropriate for us to cite them, said Karen Garcia Wade, program manager of the safety bureau.

Wade said the Allsups citation is the first of hundreds she's handled to draw attention from a high-ranking state official such as Bradley.

Wade said she and Sam Rogers, chief of the state's Occupational Health and Safety Bureau, had both been in on the decision to issue the Allsups citation. But Rogers said in a recent interview that he wasn't involved.

Rogers said that as soon as he saw Allsups' response to the citation, which pointed out that the state doesn't have any regulations on convenience store safety, he knew the state had little chance to prevail. He said he routinely doesn't see citations before they go out to preserve his independence in evaluating appeals.

Wade said the bureau hadn't tried to rely on any regulation specific to convenience stores. Rather, she said, the citation was based on a provision known as the General Duty Clause that places on employers a blanket obligation to provide a workplace free from recognized hazards.

Nonetheless, Rogers said, it would have been very difficult, if not impossible, to prove a violation. He said the department reached that determination before the lieutenant governor's office expressed an interest in the matter.

The state bureau has responsibility to enforce regulations of the federal Occupational Safety and Health Administration.

The citation against Allsups stated that at the time of her death, Williams had not been wearing a personal alarm she could have used to summon police. The citation said store employees had notified management that they had quit wearing the devices because there had been many false alarms.

By not using the devices, employees were then exposed to the possibility of assault without any means of summoning help, the citation stated. Among other methods, one feasible and acceptable method of abatement is to provide and ensure use of a personal silent alarm device that works properly without defect.

PLTF 001983

Attorney Ted L. Hartley of Clovis, who handled Allsups appeal to the states Occupational Health and Safety Review Commission, said he contacted Bradley.

Asked about Bradleys Clovis background, Allsups lawyer Hartley responded, It was just a matter of coincidence, I suppose. If he had been a lieutenant governor that I didnt know at all, I might have thought a little bit differently about calling him. I just happen to know Lieutenant Governor Bradley.

In May 1994, Allsups Convenience Stores Inc. donated \$2,500 to Bradleys primary campaign, state records show.

Hartley said he told Bradley that if, indeed, the state intended to start issuing citations concerning workplace violence in convenience stores, then Allsups needed to know exactly what the standards would be.

We could find no criterion, no rules nor regulations which would help establish what was an appropriate standard of care in this kind of thing, Hartley said.

Hartley said any business that allows people to come in off the street has the potential to come up against those individuals in the public who are violent lawbreakers. And you try to figure out what to do to deter that, and to keep them away from your premises.

Bradley said Hartley told him Allsups had been cited with a violation that he (Hartley) could not find, and his legal staff could not find in the statutes or the regulations.

Bradley said that after his staff looked into the matter, it became apparent that if left intact, the citation would serve to punish Allsups for trying to take protection of its employees to a higher level than normal in the convenience store industry. He said many stores dont issue personal alarms to clerks at all.

This was something where they (Allsups) were going above and beyond, Bradley said. He said he didnt order Environment Department officials to dismiss the citation.

Although Bradley said he knows the Allsup family from living in Clovis, he said that fact had nothing to do with the decision that his staff should meet with Environment Department officials about the citation.

Bradley described his offices involvement as normal and pointed out that he serves as a sort of ombudsman in state government, often intervening to iron out residents problems with state agencies.

Frost, lawyer for Williams estate, questioned Bradleys involvement.

The lieutenant governor claims to be an ombudsman, Frost said. But I dont think that includes trying to intervene in a situation that affects public safety like this did.

When lawyer Frost, representing Williams estate, tried to intervene in the hearing before the state safety commission, Hartley and another lawyer responded it would be improper for Frost to participate.

Because Ms. Williams is deceased, she cannot possibly be affected by any decision of the review commission, Hartley wrote to the commission.

The commission excluded Frost from participating.

PLTF 001984

Although Frost appealed the commissions decision to the New Mexico Supreme Court, he soon

dropped the matter.

We basically knew that with the lieutenant governors attitude, and bringing pressure to bear, that it was going to be an exercise in futility, anyway, Frost said.

Under OHSB regulations, Allsups was ordered to post a copy of the citation at the Tucumcari store where Williams was killed and to offer remaining employees a chance to comment.

Employees of the Tucumcari store responded with a letter to the safety bureau this January. They wrote that store management had assigned two employees to work the graveyard shift after Williams was slain.

But the employees stated, On December 2nd the District Manager called and said to stop all double coverage. At 35 hours per week double coverage on the graveyard it would cost Allsups \$9,100 per year in additional wages for this store. We feel that is a very low cost to keep employees safe and isnt a human life worth considerably more than that?

In late December, soon after the double coverage stopped, an armed robber hit the store again, the employees stated. They signed the letter, Respectfully, The Employees of Allsups #058.

Wade said the safety bureau didnt target Allsups in particular. She said the bureau decided last year when Democrat Bruce King was governor to investigate the next homicide that took place in a New Mexico convenience store, regardless of who owned it or where it happened.

That decision was made, she said, because theres a national trend within federal OSHA enforcement to address workplace violence.

We found that the number one cause of fatality for women at work was homicide, and that it was number three for men, Wade said. She said the bureau decided it would make sense to put its efforts into preventing what was killing employees.

Frost alleged that under New Mexicos worker compensation laws, its more cost effective for these convenience stores to risk getting a clerk killed every once in a while than to do anything about it.

Frost said under New Mexico law, Williams three children will receive a total of \$400 a month for a little more than 13 years as death benefits.

How are you going to raise three children on \$400 a month? Frost said. He said Williams mother is taking care of her daughters orphaned children: two teen-agers and an 11-year-old. Their father had abandoned them earlier.

Frost said employees only hope, short of legislative action, would be the state safety bureau standing up for a safe workplace.

In response to the Williams case, Deputy Environment Secretary Thornton said his agency is working with Allsups and other convenience store operations to come up with voluntary measures businesses can take to improve workplace safety.

Thornton and Rogers said such measures could include voluntary guidelines that both chain stores and independent operations could follow, such as standard lighting and keeping windows clear of signs so passers-by can see in. A draft list of such measures could be out by December, they said.

The story here is that somebody died, Thornton said of the Williams case. We looked into the situation to see whether there was something we could do. I think we should be commended.

PLTF 001985