

**In the Matter of**  
**SPUD CELLAR DELI, INC.**  
**Case No. 28-08**  
**Final Order of Commissioner Brad Avakian**  
**Issued August 11, 2009**

**SYNOPSIS**

Respondent violated Oregon child labor laws by employing minors in 2007 without first obtaining a validated employment certificate, pursuant to ORS 653.307 and OAR 839-021-0220(2); by employing minors without first verifying the age of the minors, pursuant to OAR 839-021-0185; by employing at least one minor to perform work declared to be particularly hazardous or detrimental to the health or well being of minors 16 and 17 years old, in violation of OAR 839-021-0104; and, by failing to post a validated employment certificate, pursuant to OAR 839-021-0220(3). As a result of the violations, Respondent was found liable for civil penalties in the amount of \$5,000. ORS 653.307; ORS 653.370; ORS 109.510; OAR 839-021-0220(2); OAR 839-021-0185; OAR 839-021-0104; OAR 839-021-0220(3); OAR 839-019-0020.

---

The above-entitled case came on regularly for hearing before Linda A. Lohr, designated as Administrative Law Judge ("ALJ") by Brad Avakian, Commissioner of the Bureau of Labor and Industries for the State of Oregon. The hearing was held on March 10, 2009, in the Oregon Employment Department conference room, Suite 105, located at 700 Union Street, The Dalles, Oregon.

Case presenter Jeffrey C. Burgess, an Agency employee, represented the Bureau of Labor and Industries ("BOLI" or "Agency"). Attorney Jennifer L. Bouman-Stegall represented Spud Cellar Deli, Inc. ("Respondent"). Respondent's president, Gerald Huston, was present throughout the hearing as a corporate representative.

The Agency called as witnesses: Nichole Archer (telephonic), former Respondent employee; Newell Enos (telephonic), BOLI Wage and Hour Division Compliance Specialist; Stacie Long, former Respondent employee; Karen Gernhart (telephonic), BOLI Wage and Hour Division administrative specialist; Shannon Copher, former

Respondent employee; Shelby Long, former Respondent employee; and Korryn B. Copher-Gooch, former Respondent employee.

Respondent called no witnesses.

The forum received as evidence:

- a) Administrative exhibits X-1 through X-10;
- b) Agency exhibits A-1 through A-9 (filed with the Agency's case summary).

Having fully considered the entire record in this matter, I, Brad Avakian, Commissioner of the Bureau of Labor and Industries, hereby make the following Findings of Fact (Procedural and on the Merits), Ultimate Findings of Fact, Conclusions of Law, Opinion, and Order.

#### **FINDINGS OF FACT – PROCEDURAL**

1) On October 17, 2008, the Agency issued a Notice of Intent to Assess Civil Penalties ("Notice"), Case No. 28-08, alleging Respondent violated Oregon child labor law provisions by employing at least two minors without first obtaining an annual employment certificate, employing at least two minors without first verifying their ages, employing at least one minor to engage in work declared to be particularly hazardous for minors, and failing to post a validated employment certificate in a conspicuous place readily visible to all employees. The Agency proposed civil penalties totaling \$7,000 against Respondent. In the Notice, Respondent was given 20 days from the date the Notice was mailed to file an answer and request a hearing.

2) Respondent was served with the Notice and thereafter timely filed an answer and a request for hearing through its designated authorized representative Gerald Huston. In its answer, Respondent denied all of the Agency's allegations and alleged the following affirmative defenses:

"As a First Affirmative Defense to the [Notice], Respondent alleges that it did not authorize the employment of the minor children named in the [Notice]."

“As a Second Affirmative Defense to the [Notice], Respondent contacted the local office of the Department of Labor prior to the dates alleged in the Notice in an effort to assure compliance with the Department’s rules and regulations, and follow the directions of the Department.

“As a Third Affirmative Defense to the [Notice], Respondent alleges that Korryn Copher was never authorized by Respondent to use a meat slicer and such conduct, if it occurred, was as a result of said child’s own folly.”

On October 30, 2008, the Agency submitted the pleadings to the Hearings Unit and requested a hearing.

3) On November 3, 2008, the Hearings Unit issued a Notice of Hearing stating the hearing would commence at 9:00 a.m. on January 15, 2009. The Notice of Hearing included a copy of the Notice of Intent to Assess Civil Penalties, a language notice, a Servicemembers Civil Relief Act notification, and copies of the Summary of Contested Case Rights and Procedures and the Contested Case Hearing Rules, OAR 839-050-0000 to 839-050-0440.

4) On November 12, 2008, the ALJ issued an order requiring the Agency and Respondent each to submit a case summary that included: a list of all persons to be called as witnesses, including expert witnesses; identification and copies of all documents to be offered into evidence; a statement of any agreed or stipulated facts; and, for the Agency only, a brief statement of the elements of the claim and penalty calculations. The ALJ ordered the participants to submit their case summaries by January 5, 2009, and notified them of the possible sanctions for failure to comply with the case summary order. On the same date, the ALJ issued an order pertaining to fax filings and timelines for responding to motions and service of documents.

5) On December 31, 2008, the Agency moved for a postponement of the hearing and an extension of time to file case summaries. The Agency’s motion was made on the ground that Respondent’s counsel had been traveling out of state due to a death in her family and was unable to adequately prepare for hearing. Respondent did

not oppose the motion and the Agency stated that the motion was made “as a courtesy” to counsel and Respondent. On January 7, 2009, following a prehearing conference, the ALJ granted the Agency’s motion and extended the due date for filing case summaries. The hearing was rescheduled to commence on March 10, 2009, and the case summary deadline was extended to February 27, 2009.

6) The Agency and Respondent timely submitted case summaries.

7) On February 27, 2009, Respondent’s counsel filed a second answer to the Notice. In the second answer, Respondent admitted the substantive allegations and alleged 11 affirmative defenses pertaining to mitigating circumstances. Respondent also alleged that the Agency’s proposed civil penalties “are excessive, unreasonable, and inconsistent with the guidelines outlined in OAR 839-019-0025 and ORS 653.370.”

8) On March 9, 2009, Respondent’s counsel filed a third “amended answer” to the Notice, revising its answer to paragraph 5 of the Notice. The “amended” answer was identical to the answer filed on February 27, 2009; except that instead of admitting the allegation in paragraph 5 of the Notice, Respondent stated that it “lacks knowledge and information sufficient to form a belief as to the truth of the allegation set forth in paragraph 5 of the Notice and therefore denies the same.”

9) At the start of hearing, the ALJ verbally informed the participants of the issues to be addressed, the matters to be proved, and the procedures governing the conduct of the hearing.

10) Before the evidentiary portion of the hearing commenced, the Agency sought to clarify the status of Respondent’s multiple answers to the Notice. Respondent’s counsel stated that initially she was unaware of Respondent’s first answer, filed *pro se*, and believed the answer she filed on Respondent’s behalf was the first answer to the Agency’s Notice and that the “amended” answer she filed on

Respondent's behalf was the second. Respondent was entitled to amend its answer once as a matter of course before a responsive pleading was filed. OAR 839-050-0140(1). For that reason, the ALJ determined that the answer filed on February 27, 2009, was Respondent's amended answer and controlling for the purpose of hearing. The third answer filed on March 9, 2009, was disregarded.

11) The ALJ issued a proposed order on July 8, 2009, that notified the participants they were entitled to file exceptions to the proposed order within ten days of its issuance. Respondent timely filed exceptions that are addressed in the opinion section of this Final Order.

### **FINDINGS OF FACT – THE MERITS**

1) At times material, Respondent was an Oregon corporation operating a restaurant under the assumed business name of Spud Cellar Deli. Gerald Huston was Respondent's president and sole owner.

2) In or around June 2007, Respondent, through Huston, hired Shannon Copher ("S. Copher") to prepare food and work the cash register at the Spud Cellar Deli. S. Copher had some prior management experience and she helped Huston recruit and schedule summer staff. Anticipating a need for additional short term help during the Fort Dalles Day rodeo, S. Copher told Huston that she knew "a couple of girls who could make shakes" and were looking for temporary work. Huston agreed to interview both girls, Korryn Copher (K. Copher), S. Copher's daughter, and Shelby Long (S. Long), S. Copher's niece.<sup>1</sup> Huston hired K. Copher to make and serve food, wash dishes, and clean. Huston hired S. Long to serve food, clean and cut vegetables, wash dishes and clean the dining room. K. Copher worked at the Spud Cellar Deli approximately two weeks and S. Long worked there approximately three days.

3) K. Copher's birthdate is February 6, 1991, and S. Long's birthdate is April 25, 1991. Huston knew the girls were under 18 years old when they were hired. When

she was hired, K. Copher told Huston she was 16 years old and he told her that she could not serve beer to customers. After she assisted customers with Keno two or three times, he told her she was not allowed to handle Keno. Huston told S. Long that she could not serve alcohol or go in the Keno room. He told her that “you have to be 18 to go in the Keno room.” Keno is a game of chance governed by the Oregon Lottery Commission.

4) Huston taught K. Copher how to operate the meat slicer and told her to always wear the metal mesh glove when using the slicer. The metal mesh glove did not fit K. Copher’s hand. The glove’s fingers were an inch longer than hers and she was afraid the glove would “get sucked” in the machine, taking her hand with it. Several times, she told Huston and a co-worker, Sara, that she was concerned about the ill-fitting glove, but Huston did not respond to her concerns. She used the metal mesh glove “most of the time” when operating the meat slicer.

5) K. Copher told her mother, S. Copher, that she was using the meat slicer while preparing food. S. Copher knew K. Copher should not be using the slicer and told her not to use it anymore. K. Copher told Huston that her mother did not want her to use the meat slicer and Huston told her that she worked for him and not her mother.

6) Nichole Archer, S. Copher’s friend and co-worker, worked the same shift as K. Copher and observed her using the meat slicer. Archer did not know that K. Copher should not be using the meat slicer. On several occasions, she had heard Huston tell K. Copher and others to use the metal mesh glove. One day, while operating the meat slicer, K. Copher said “ow” loud enough for Archer to hear. Archer was startled and thought K. Copher was injured. When she turned around, K. Copher told her that she was okay and was “just joking around.” Archer sternly told K. Copher never to do that again and later reported the incident to Huston who was not present at

that time. Huston's wife was present and appeared shocked when Archer scolded K. Copher. Thereafter, nothing was ever said or done about the incident.

7) Several days after she feigned an injury to "tease" Archer, K. Copher sliced off the tip of her thumb on the meat slicer while slicing tomatoes. She was not wearing the metal mesh glove. S. Copher took K. Copher to the hospital where she received seven to nine stitches. K. Copher, through her mother, filed a workers' compensation claim. BOLI's Child Labor Unit later received information from the Workers' Compensation Department about K. Copher's injury. K. Copher's injury left her thumb permanently scarred and she still suffers discomfort when she uses her thumb to write.

8) S. Long never used and was never asked to use the meat slicer while working for res.

9) Huston told all employees who used the meat slicer that they would be fired if they did not use the metal mesh glove. There was no written policy, handbook, or posting that pertained to the meat slicer.

10) Respondent did not obtain a validated annual employment certificate from BOLI before hiring K. Copher and S. Long.

11) Respondent did not ask K. Copher or S. Long to provide an acceptable proof of age document before employing them.

12) Huston cooperated with the Agency's child labor investigation.

13) All of the witness testimony was credible and not disputed.

#### **ULTIMATE FINDINGS OF FACT**

1) At times material, Respondent was an Oregon corporation operating a restaurant under the assumed business name of Spud Cellar Deli and employing one or more persons in Oregon.

2) In June 2007, Respondent hired S. Long and K. Copher to work in Respondent's restaurant.

3) S. Long and K. Copher were 16 years old when Respondent hired them to work in the restaurant.

4) Respondent did not verify the ages of S. Long or K. Copher before they began working in the restaurant.

5) Respondent did not apply for or obtain an annual employment certificate to hire minors in 2007.

6) Respondent did not post a validated employment certificate in a conspicuous place readily visible to all employees in 2007.

7) During her employment with Respondent in June 2007, K. Copher cut off the tip of her thumb while using Respondent's meat slicer and, as a result, suffered a permanent injury.

8) K. Copher worked approximately two weeks and S. Long worked approximately three days for Respondent during the summer of 2007.

9) Respondent's corporate president cooperated with the Agency's child labor investigation.

#### **CONCLUSIONS OF LAW**

1) At all times material herein, Respondent was an employer and subject to the provisions of ORS 653.305 to 653.370.

2) The actions, inaction, statements, and motivations of Gerald Huston, Respondent's corporate president, are properly imputed to Respondent.

4) The Commissioner of the Bureau of Labor and Industries has jurisdiction over the subject matter and Respondent herein. ORS 652.310.

5) The legal age of majority in Oregon is 18 years old. ORS 109.510.

6) Respondent violated OAR 839-021-0185 by employing at least two minors under 18 years old without verifying their ages.

7) Respondent violated ORS 653.307 and OAR 839-021-0220(2) by employing minors under 18 years old in Oregon during 2007 without first obtaining a validated annual employment certificate to employ minors.

8) Respondent violated OAR 839-021-0104 by employing at least one minor child under 18 years old in 2007 to perform work using a meat slicer, an occupation declared to be particularly hazardous or detrimental to the health or well being of minors 16 and 17 years old.

9) Under the facts and circumstances of this record, and according to the applicable law, the Commissioner of the Bureau of Labor and Industries is authorized to assess civil penalties against Respondent for each violation of ORS 653.305 to 653.370 or any rule adopted by the Wage and Hour Commission thereunder. ORS 653.370, OAR 839-019-0010(1)&(2), and OAR 839-019-0025.

### **OPINION**

In its amended answer, Respondent admitted the substantive allegations alleged in the Notice of Intent to Assess Civil Penalties, but denied the Agency's proposed civil penalties were justified or appropriate under OAR 839-019-0020, 839-019-0025, or ORS 653.370.

Based on Respondent's admissions and credible evidence that substantiated each of the Agency's allegations, Respondent is deemed liable for civil penalties for: 1) employing at least two minor children between June and August 2007 without obtaining an annual employment certificate to hire minors; 2) hiring minors without first verifying their ages; 3) employing at least one minor to engage in work particularly hazardous for minors, resulting in an injury to the minor; and 4) failing to post a validated employment certificate in a conspicuous place readily visible to all employees. The only issue is

whether the civil penalties proposed for each violation are warranted or mitigated by evidence in the record.

## **CHILD LABOR VIOLATIONS/CIVIL PENALTIES**

Each violation is a separate and distinct offense. OAR 839-019-0015.<sup>ii</sup> The maximum civil penalty for any one violation is \$1,000 and the actual amount depends upon “all the facts and any mitigating and aggravating circumstances.” OAR 839-019-0025(1). Willful and repeated violations are considered to be of such seriousness and magnitude that no less than \$500 for each willful and repeated violation will be imposed when the forum determines to impose a civil penalty. OAR 839-019-0025(5).

When determining the civil penalty amount to be imposed, the forum must consider Respondent’s history in taking all necessary measures to prevent or correct violations; any prior violations, if any; the magnitude and seriousness of the violations; the opportunity and degree of difficulty in complying with the statutes and rules; and any other mitigating circumstances. OAR 839-019-0020(1). Respondent is required to provide the forum with evidence of mitigating circumstances. OAR 839-019-0020(2). When arriving at the actual amount to be imposed, the forum must consider whether a minor was injured while employed in violation of the statute and rules. OAR 839-019-0020(3).

### **A. Respondent employed minors in 2007 without first obtaining a validated employment certificate.**

The minimum civil penalty for employing minors without a valid employment certificate is \$100 for the first offense, \$300 for the second offense, and \$500 for the third and subsequent offenses. OAR 839-019-0025(2). Here, Respondent employed two minors without first applying for and obtaining a validated employment certificate. The violations are substantially aggravated by K. Copher’s injury, incurred while she was performing inherently hazardous work. OAR 839-019-0020(3); OAR 839-019-

0020(1)(c). The violations are further aggravated because the failure to file a validated employment certificate thwarts the Agency's ability to enforce the child labor laws. An application for an employment certificate must include a description of the duties to be performed by the minors and a list of the machinery or other equipment to be used by the minors. OAR 839-021-0221(1)(d)&(e). If Respondent had complied with the law, presumably, the Agency would have denied the application and Respondent would have terminated K. Copher's employment or changed her job duties to exclude hazardous ones, thereby preventing her injury. Respondent's argument that it did not have sufficient opportunity to comply with the statute and rules has no merit. Business exigencies - in this case, being shorthanded during an anticipated busy period - are not a mitigating circumstance. Credible evidence shows Respondent was in business for at least two years and should have anticipated an increase in business during the months that particular local events are scheduled.

As mitigation, credible evidence established that Respondent has no prior offenses and that its failure to obtain a validated employment certificate to employ minors in 2007 was its first violation of record. Additionally, the magnitude of the violation was relatively small because Respondent hired two minors, one of whom was employed about two weeks and the other for three days, and one of the minors did not engage in hazardous work. Evidence also showed Respondent cooperated during the Agency's child labor investigation.

However, the Agency alleged and proved by a preponderance of credible evidence that Respondent knew or should have known of the violations. Respondent knew K. Copher and S. Long were minors when hired and knew K. Copher was operating the meat slicer during her employment. Moreover, credible evidence established that Respondent knew the metal mesh glove did not fit K. Copher's hand,

but chose to ignore her safety concerns while allowing her to continue operating the meat slicer. Those facts constitute aggravating circumstances that overcome the mitigating circumstances in this particular case.

The Agency seeks the maximum civil penalty of \$1,000 for each of two violations. The forum finds that Respondent's failure to apply for and obtain a validated employment certificate to hire minors in 2007 constitutes one violation, and, having considered both the aggravating and mitigating circumstances, concludes that Respondent is liable for **\$1,000** as an appropriate civil penalty for violating ORS 653.307 and OAR 839-021-0020(2).

**B. Respondent employed minors in 2007 without first verifying the age of each minor.**

Respondent was required to verify the age of all minors by requiring the minors to produce an acceptable proof of age document. OAR 839-021-0185(1). An acceptable proof of age document includes, but is not limited to, a birth certificate, a state-issued driver's license, a U. S. Passport, or other acceptable proof approved by BOLI. OAR 839-021-0185(2). Additionally, Respondent had an affirmative duty to retain a record of the document used to verify each minor's age. A notation in each minor's personnel file identifying the document used to verify the minor's age satisfies the requirement. OAR 839-021-0185(3).

Respondent did not dispute and credible evidence established that Respondent's corporate president did not ask K. Copher or S. Long to produce a proof of age document when he hired them in June 2007. The violations are substantially aggravated by K. Copher's bodily injury, incurred while performing inherently hazardous work. The violations are serious because the purpose for verifying a minor's age before hire is to ensure that the minor is employed under proper working conditions and with proper hours for that specific age. *In the Matter of Panda Pizza*, 10 BOLI 132, 146

(1992). Failing to verify a minor's age reduces the employer's ability to safely and legally employ a minor. *Id.* at 146. Respondent's president knew K. Copher and S. Long were minors because he told both they could not serve alcohol to customers or go in the Keno room because they were "under 18." At that point, he had a duty to verify their specific ages in order to safely and legally employ them. Respondent's argument that it did not have sufficient opportunity to comply with the statute and rules has no merit. The opportunity to comply arose when Respondent's president interviewed the minors before hiring them. Verifying their ages at that time and making a notation in their personnel files identifying the document used to verify their ages could have been done without any degree of difficulty. That the minors were hired as temporary help for a short period does not negate Respondent's duty to comply with child labor laws.

While Respondent has no prior history of child labor violations and cooperated with the Agency during the investigation, the additional violations could have been prevented if Respondent had complied with the law in the first place. Accordingly, after considering the aggravating and mitigating circumstances, the forum concludes that Respondent is liable for **\$2,000** (\$1,000 per violation) as an appropriate penalty for two violations of OAR 839-021-0185.

**B. Respondent employed a minor to engage in work declared to be particularly hazardous to minors.**

Respondent does not dispute that K. Copher suffered bodily injury while operating Respondent's meat slicer, which is a violation of OAR 839-021-0104 and Federal Hazardous Occupations Order No. 10. As mitigating circumstances, Respondent alleged that it took reasonable steps to ensure that minors were working in a safe environment and in a safe manner, that K. Copher's injury was not serious, and that she was injured "as a result of her own folly," i.e., she did not follow "posted" safety guidelines or express safety instructions given to all employees.

Respondent's admission that it did not obtain a validated employment certificate or verify the ages of the two minors completely negates Respondent's argument that it took reasonable steps to ensure the minors' safety in the workplace. The child labor laws were designed to ensure the safety of minors and Respondent's failure to comply demonstrates that it did not take reasonable steps to protect minors in its employ. Moreover, credible evidence shows Respondent ignored K. Copher's and her mother's concerns about the ill-fitting metal mesh glove - designed to fit an adult, not a child, and that posed an equal if not greater danger to K. Copher if she used it. Had Respondent truly been concerned about K. Copher's safety, it would not have required her to operate the meat slicer in the first place. If anything, Respondent demonstrated complete disregard for her safety by not even responding to her concerns about the ill-fitting glove. Additionally, had Respondent complied with the child labor law requiring a validated employment certificate to hire minors, the injury would not have occurred because Respondent would have been required to either change K. Copher's duties to exclude performing hazardous work or not hire minors. Evidence that Respondent's president trained K. Copher how to use the meat slicer and warned all employees, including K. Copher, that they would be fired if they did not use the metal mesh glove is not a mitigating circumstance. K. Copher should not have been operating a meat slicer, glove or no glove.

Respondent's argument that K. Copher's injury was not serious and was a result of her own folly only demonstrates Respondent's failure to understand the purpose of the child labor laws. The purpose of labor laws generally is to protect all workers from employer exploitation. Children are particularly vulnerable; hence, the child labor laws hold employers to certain standards that enable minors to participate in the workforce without risk to life and limb and that protect them from the vagaries of youth, including

occasional lapses of judgment. To that end, certain occupations have been deemed inherently hazardous to the health and well being of minors and employers are prohibited from employing minors in those jobs. Operating a meat slicer is one of them. If Respondent had applied for an employment certificate and listed the machinery K. Copher would be operating, the Agency would have denied the application and Respondent either would have terminated K. Copher's employment or changed her job duties to exclude the hazardous ones. OAR 839-021-0220(6). Instead, K. Copher suffered an injury serious enough to require immediate medical attention and that left a permanent scar and continued discomfort whenever she uses her thumb. As previously stated, while Respondent has no prior history of child labor violations, cooperated with the Agency during the investigation, and employed the minors for a short duration, K. Copher's injury was entirely preventable and only happened because Respondent failed to comply with child labor laws.

Accordingly, after considering the aggravating and mitigating circumstances, the forum concludes that Respondent is liable for the maximum penalty of **\$1,000** for one violation of OAR 839-021-0104 and Federal Hazardous Occupations Order No. 10.<sup>iii</sup>

**C. Respondent failed to post a validated employment certificate in 2007.**

Respondent admits it did not apply for or obtain an annual employment certificate in 2007, and, therefore, did not post a validated employment certificate in a conspicuous place readily visible to all employees in 2007, in violation of OAR 839-021-0220(3). The failure to post constitutes one violation and, after considering all of the aggravating and mitigating circumstances that apply to the previous violations, the forum concludes that Respondent is liable for **\$1,000** as an appropriate civil penalty for violating OAR 839-021-0220(3).

## RESPONDENT'S EXCEPTIONS

On July 20, 2009, Respondent's counsel submitted handwritten exceptions that were signed by "Spud Cellar Deli." The exceptions stated, in pertinent part:

"Exception #1

"[Korin was hired] at request of her mother Shannon (asst mgr) and I was told she would be 18 in two weeks. She was to bus tables and wash dishes 2-4 Mon-Fri.

"#2 I absolutely did not want her anywhere near the slicer, nor did I train her on the slicer.

"#3 Shannon hired her niece while I was out of town. When I came back and ask [sic] her why, she said to 'keep the peace in the family.' I terminated her on the spot and paid her for the seven hours she had put in.

"#4 This incident is a [sic] ongoing ploy by Shannon and her friends and family to get money. They will do and say anything to do so. Thank you."

Respondent's exceptions assert facts that are not in the record. Notwithstanding Respondent's answer admitting the substantive allegations, Respondent, despite ample opportunity to do so, did not refute any of the testimony or documentary evidence presented at hearing. Moreover, Respondent's assertion that the "incident" was a ploy by its employees "to get money" is misguided. ORS 653.370 provides, in pertinent part:

"4) All sums collected as penalties pursuant to this section shall be first applied toward reimbursement of the costs incurred in determining the violations, conducting hearings under this section and assessing and collecting such penalties. The remainder, if any, of the sums collected as penalties pursuant to this section shall be paid over by the commissioner to the Department of State Lands for the benefit of the Common School Fund of this state. The department shall issue a receipt for the money to the commissioner."

Respondent's exceptions are **DENIED**.

## ORDER

NOW THEREFORE, as authorized by ORS 653.370, and as payment of the penalties assessed for violations of ORS 653.307, OAR 839-021-0220, OAR 839-021-0185, and OAR 839-021-0104, the Commissioner of the Bureau of Labor and Industries

hereby orders **Spud Cellar Deli, Inc.**, to deliver to the Fiscal Services Office of the Bureau of Labor and Industries, 1045 State Office Building, 800 NE Oregon Street, Portland, Oregon 97232-2180, a certified check payable to the Bureau of Labor and Industries in the amount of FIVE THOUSAND DOLLARS (\$5,000), plus any interest thereon that accrues at the legal rate between a date ten days after the issuance of the Final Order and the date Spud Cellar Deli, Inc., complies with the Final Order.

---

<sup>i</sup> Witness Stacie Long (C. Long) was S. Long's mother and S. Copher's sister.

<sup>ii</sup> Under the rule, in the case of continuing violations, each day's continuance is a separate and distinct violation. However, the Agency did not allege any continuing violations or present any evidence demonstrating continuing violations.

<sup>iii</sup> The Agency did not allege a continuing violation as permitted under OAR 839-019-0015. Given the nature of the injury and the other aggravating circumstances, had the Agency alleged a continuing violation, the forum would have assessed a \$1,000 civil penalty for each day K. Copher used the meat slicer while in Respondent's employ.