



U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

Record of Commission Action
May 11, 1978

1111-18th Street, N.W.
Washington, D.C. 20207

Presiding: Chairman Byington
Present: Commissioner Franklin
Commissioner King
Commissioner Pittle
Commissioner Sloan

ITEM:

Interpretation of § 4(g)(2) of the Consumer Product Safety Act

BACKGROUND:

A former employee of the Commission, GS-15, by letter dated February 17, 1978, requested the Commission to interpret § 4(g)(2) of the CPSA to exclude drug manufacturers from its coverage in order that she may accept an offer of employment from a drug manufacturer, within one year of resigning her position at the Commission.

DECISION:

The Commission decided that a drug manufacturer is a "manufacturer" subject to the CPSA for the purpose of § 4(g)(2) since it interprets the phrase "manufacturer subject to this Act" in § 4(g)(2) to include all manufacturers subject to the Commission's regulatory authority, including manufacturers regulated by the Commission under the acts transferred to the Commission by § 30 of the CPSA. Since a drug company is subject to the Commission's regulatory authority under the Poison Prevention Packaging Act, it would be a manufacturer for the purpose of § 4(g)(2). Accordingly, § 4(g)(2) would be applicable to the former employee's situation.

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However, the Commission further decided that although §4(g)(2) is applicable, it will not enforce the provision in this case for the following reasons: (1) the employee appears to have been offered employment by the drug manufacturer because of her background in communications rather than her position with the Commission; (2) she has stated that she did not seek employment with the Commission or use a position with the Commission as a means to gain employment with a drug manufacturer; and (3) she agrees, by letter dated April 7, 1978, that she will not advise or represent the drug manufacturer on any matter which will fall within the scope of the Commission's regulatory authority for a period of twelve months from the date which she left the agency.

In view of the above, the Commission decided that the statutory purpose of §4(g)(2), which is to prevent CPSC employees (above GS-14, step one) from seeking or using their Commission office as a means of subsequently gaining employment in the regulated industry, has not been violated and the statute would not be served by enforcement in this particular case.

The Commission agreed that its interpretation of the phrase "manufacturer subject to this Act" in this matter only applies to §4(g)(2) and not to any other provision in the CPSA.

VOTE:

Concur

Commissioner King

Sean B. King
(signature)

5-11-78
(date)

Commissioner Pittle

R. David Pittle
(signature)

5/11/78
(date)

Commissioner Sloan

J. R. Barkdale
(signature)

5/11/78
(date)

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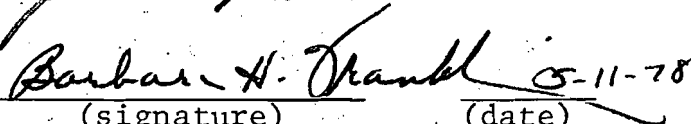
The following Commissioners concurred with the decision that the former employee may accept employment from the drug manufacturer within one year after terminating employment with CPSC. However the basis for their decision is their opinion that a drug manufacturer is not a manufacturer for the purpose of section 4(g)(2) because of the statutory exclusion of drugs from the definition of consumer product in section 3(a)(1)(H) of the CPSA.

Chairman Byington


(signature)

(date)

Commissioner Franklin


(signature)

5-11-78
(date)

Submitted by the
Office of the General Counsel