

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: **1556756** Originating District: **Des Moines IA District Office**
Local Filing Number: **2009-180-09870** Investigating District: **Des Moines IA District Office**
WHMIS Case Number: Lead Investigator: **(b) (7)(C), (b) (7)(D)**
Registration Date: **08/26/2009**
Assignment Date: **10/08/2009**

Employer Information

Trade Name: **Hardees of Albia** Legal Name: **REO Enterprises**
Address: **1118 S Clinton St.** EIN: **43-1465774**
County: **Monroe**
NAICS Code: **722211**
No. Of Employees: **(b) (7)(D)**
Albia, IA52531

Investigation Information

Period Investigated From: **10/16/2007** BNPI:
To: **10/12/2009** Reinvestigation: ☐
Investigation Type: **Complaint** Recurring Violation: ☐
Investigation Tool: **Full Investigation** Future Compliance Agreed: ☒
Compliance Status: **Agree to Comply** Involved in AG: ☐

Recommended Action:

BWFS: ☐ RO/NO Review: ☐
CMP: ☒ Follow Up Investigation: ☐
Litigation: ☐ Other Action: ☐
Civil Action: ☐ Denial of Future Certificate: ☐
Criminal Action: ☐ BW Payment Deadline: **01/31/2010**
Submit For Opinion: ☐ Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
Hours Standards - 14 and 15 year olds-- NonAgriculture / Agree to Comply	7	0	\$0.00	\$0.00	\$0.00	\$0.00	\$3,865.00

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CL

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
<i>Reg. 3 Occupations - Non-Ag but not HO - 14 and 15 year olds / Agree to Comply</i>	6	0	\$0.00	\$0.00	\$0.00	\$0.00	\$4,830.00
<i>Age - Non-Ag - Under 14 / Agree to Comply</i>	1	0	\$0.00	\$0.00	\$0.00	\$0.00	\$770.00
<i>HO - Non-Ag - 16 or 17 / Agree to Comply</i>	3	0	\$0.00	\$0.00	\$0.00	\$0.00	\$4,650.00
CL Totals:	0	8	\$0.00	\$0.00	\$0.00	\$0.00	
Total Violations Under CL :	17						\$14,115.00

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
<i>Failure to pay Minimum Wage / Agree to Comply</i>	7	7	\$264.20	\$264.20	\$0.00	\$0.00	
<i>Failure to pay proper overtime / Agree to Comply</i>	1	1	\$3,767.75	\$3,767.75	\$0.00	\$0.00	

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FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
<i>Failure to keep accurate records / Agree to Comply</i>	1	0	\$0.00	\$0.00	\$0.00	\$0.00	
FLSA Totals:	8	8	\$4,031.95	\$4,031.95	\$0.00	\$0.00	
Total Violations Under FLSA :	9						\$0.00

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	8	Unduplicated Employees Agreed:	8
Total Amount BWs Computed:	\$4,031.95	Total Amount BWs Agreed:	\$4,031.95
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

77.25 hrs; enterprise coverage; FC 12/16/09 with Matthew Jones, District Manager; MW viol due to uniform ded, YOW inappr applied, and unpaid HW; OT viol for one salaried non-exempt ee; RK viol because electronic HW records purged after payroll processed and no perm copie; RK viol because 2007 payroll unavailable; CL viol: Reg 3 hrs, Reg 3 Occ (fryer and NEICO), H0#2; ATP ATFC; pubs: HRG 516 778 785 CL-101 with GINA 2-STOPstickers FMLA-CG TIPSpamphlet FS#17G-salary TeenDrivingPoster

WHI Signature: _____ Date: 01/05/2010

Reviewed By: _____ Date: _____

NARRATIVE REPORT

Legal Name:	Trade Name:	
R.E.O. Enterprises, Inc.	Hardee's	EIN #43-1465774
407 S Elson	1118 S Clinton	case ID#1556756
Kirksville, MO 63501	Albia, IA 52531	file #2009-180-09870

Employer Contact: Matthew Jones, District Manager, 641-932-5386

Coverage: This fast food restaurant was opened in 1987. The business was incorporated in the State of Iowa on 12/14/87 as R.E.O. Enterprises, Inc. R.E.O. also has a Hardee's in Chariton, IA. The enterprise's Osceola, IA Hardee's was closed in 2006. The corporation is wholly owned by Regina Orskog and headquartered in Kirksville, MO. Until about eight years ago the Orskog's also operated several Kentucky Fried Chicken restaurants in Iowa and Missouri under the corporate name Orskog.

The gross sales for the past three calendar years were \$1(b) (4) (2008), (b) (4) (2007), and (b) (4) (2006). The sales figures were provided by Matthew Jones via e-mail (exhibit C-3). The restaurant accepts credit cards. Enterprise coverage, section 3(s)(1)(A), existed throughout the investigation period of 10/16/07 - 10/12/09.

Matthew Jones, district manager, is in charge of the day-to-day operations, sets the rates of pay, and establishes the HR policies.

This investigation was limited to the Albia location; however it is recommended that a spin-off investigation be set up for the Chariton Hardee's.

A MODO record was established by the Kansas City District Office and this case was associated in WHISARD on 10/21/09 (exhibits D-1/D-8).

Exemptions:

Applicable: 541.100 - Matthew Jones; District Director; \$ [REDACTED] per year; supervises two store managers and two-three shift leaders; has authority to hire/fire; primary duty is to oversee the management of two restaurants

Not Applicable: 541.100 - Linda Jones; Shift Leader; only supervises one kitchen employee

Status of Compliance:

Basis of Investigation/History: This investigation was (b) (7)(C), (b) (6)

(b) (7)(C), (b) (6) claimed that recorded hours of work were deleted from (b) (7)(C), (b) (6) time card and unpaid, employees under the age of 16 worked until 11PM, one employee began working at the age of 12, meetings were unpaid, and cash register shortages were deducted from employee wages.

The WHISARD history consisted of four conciliations and one limited investigation (exhibits E-11/E-20). The limited investigation (case #1370307) was conducted as an office audit and covered the three Hardee's locations. The limited investigation covered the period 07/02 - 07/04 and only dealt with the issue of uniform deductions. De minimis minimum wage violations were found in the limited investigation. The narrative's only mention of child labor indicated that "no determinations made" (exhibit E-19); however the employer was provided Fact Sheet #2 - Restaurants. The current version of that fact sheet provides a brief overview of child labor standards. Case ID#1370307 was linked to this case in WHISARD.

Section 6 (MW): Minimum wage violations occurred for three reasons: uniform deductions, inappropriate use of the Youth Opportunity Wage, and unpaid hours worked. In August 2009, employees were required to pay for red polo shirts with the Hardee's logo; prior to August 2009 t-shirts were provided at no cost to employees. The polo shirts cost \$9.80 each. The computations were based on the employer being required to provide two shirts to employees who worked 4 or more days per week and one shirt for employees who worked less than 4 days per week. The employer's only hours worked records were the bi-weekly hours reported on the payroll. Because a typical shift was 5-6 hours, a 4-day work week was deemed to be 24 hours or 48 hours per bi-weekly pay period. The employer provided details for employees who had purchased shirts; two additional employees were identified as a result of interviews (b) (7)(C), (b) (6). The employer collected for the shirts when the 8/10/09 payroll checks were issued. The amount that the cost of the shirt(s) cut into the employees' minimum wage for the two weeks ended 8/10/09 was cited as a minimum wage violation (exhibit A-5). Back wages were de minimis for eight of the twelve employees due wages as a result of the uniform collection. Mr. Jones was asked why this violation occurred, when uniform deductions had been the sole focus of the 2004 limited investigation. He said that his understanding was that the cost of a uniform could not be deducted from the pay check, but that it was not a violation if the employee paid cash for the required uniform.

The Youth Opportunity Wage (YOW) was applied in accordance with the State of Iowa's training wage which is applicable to all employees, regardless of age. Mr. Jones was advised that the stricter standards of the federal YOW needed to be followed and only applied to employees under the age of 20

for their first 90 days of employment. In addition to using a sub-minimum wage for employees age 20 or older, on several occasions the sub-minimum wage was used for more than 90 days. The bi-weekly payroll records for 2008 and 2009 were reviewed for all employees; WH-55s were prepared for those paid a rate less than the applicable federal minimum wage (exhibits A-6/21). 14 employees were due wages as a result of this error; eight of those were de minimis. Mr. Jones was advised that back wages of less than \$20 should be paid to current employees on their next check, but back wages of less than \$20 due former employees were to be paid at the employer's discretion (exhibit D-10).

(b) (7)(C), (b) (6) claimed that (b) (7) had been shorted 1.5 hours on her final check. (b) (7) was a minimum wage employee. (b) (7) claimed that Matthew Jones said (b) (7) wasn't working those final 1.5 hours and refused to pay. Mr. Jones confirmed that (b) (7)(C), (b) (6) was on duty the 1.5 hours, but said that (b) (7) sat at the drive-through window playing with (b) (7) cell phone and performed no work duties. He was advised that if (b) (7) was available for work, regardless of how unproductive (b) (7) was, that (b) (7) was due at least minimum wage for those hours. Mr. Jones agreed to pay.

Only (b) (7)(C), (b) (6) claimed that cash register shortages had been collected from (b) (7) no other employees confirmed this issue. (b) (7)(C), (b) (6) said (b) (7) quit paying for cash register shortages in February 2009. During the remainder of (b) (7) work period that occurred in the investigation period (10/16/07 – 1/31/09) the State of Iowa minimum wage was paid and it was higher than the federal minimum wage. This issue was not pursued as a back wage issue.

7 employees due \$264.20

Section 7 (OT): One employee, (b) (7)(C), (b) (6), was paid a salary with no overtime premium. As noted above, (b) (7) did not meet the criteria for a 541 exemption. Because there were no hours worked records, (b) (7) interview statement was used as the basis for back wage computations (exhibit B-7). (b) (7)(C), (b) (6) estimated that (b) (7) worked 45.5 hours per week. Overtime was computed by dividing the weekly salary by 45.5 and applying 1/2 that rate to the 5.5 hours of overtime (exhibit A-12). Matthew Jones could not provide the payroll records for 10/07 - 12/07 so it was assumed that the rate of pay in effect January 2008 was applicable to 2007. During the period October 2007 - April 2008 when the payroll was semi-monthly, the weekly salary was computed as semi-monthly * 24 / 52. When the payroll was changed to bi-weekly in May 2008, the weekly salary was computed by dividing the bi-weekly salary by 2.

(b) (7)(C), (b) (6) is currently being paid an hourly wage and will be paid time and 1/2 if (b) (7) works in excess of 40 hours per week. Mr. Jones is going to have (b) (7) go through a management trainee program and will explore the possibility of (b) (7) position being changed to meet the 541.100 exemption in the future. Mr.

Jones thought all salaried employees were exempt from overtime.

1 employee due \$3,767.75

Section 11 (RK): Employees used the cash registers to record their hours of work. After the hours were processed for the bi-weekly payroll, the hours worked records were purged from the cash register system. There were no paper copies of the daily hours worked records. Mr. Jones began saving the hours worked files immediately after the initial conference on 10/27/09 and was advised that those records should be maintained for two years. Mr. Jones was not aware that hours worked records should be kept for two years.

Mr. Jones could only provide the payroll records for calendar years 2008 and 2009. The records for October 2007 – December 2007 were not available. He was advised that payroll records must be kept for three years; he wasn't aware that payroll records had to be kept for three years.

Several employees claimed that they were not paid for meetings. Mr. Jones said that he did not have employees clock in/out for meetings but did add the meeting time to their recorded hours of work. This issue was not pursued for back wage purposes.

There was no indication that employees worked at both Hardees locations.

Section 12 (CL): Child labor violations were present for a number of reasons. Attempts were made to interview the twelve employees known to have worked while under the age of 16. Seven were interviewed; the other five did not respond to WH-41s sent on 11/19/09 (exhibits D-20/27). The violations are detailed below. In addition to the cited violations, several other issues need to be mentioned:

- I. (b) (7)(C), (b) (6) (age 5 or 6) accompanied his father to the restaurant. Employees provided conflicting accounts of whether (b) (7)(C), (b) (6) worked or not (exhibits B-1, B-2, B-6; B-10, and B-12). (b) (7)(C), (b) (6) claimed that (b) (7)(C), (b) (6) did some cleaning and filled napkin holders. The only other employee that said (b) (7)(C), (b) (6) performed any work duties said that (b) (7)(C), (b) (6) sat at the drive-through window with another worker and handed bills as change to customers (exhibit B-1). The other three employees said that (b) (7)(C), (b) (6) performed no work; (b) (7)(C), (b) (6) stayed in the office and played games. This alleged violation could not be substantiated and was not cited as a violation. (b) (7)(C), (b) (6) was not on the payroll.
- II. Due to the lack of daily hours worked records, there was no historical evidence of the hours that employees under the age of 16 worked. All Reg 3 hours violations are based on employee interview statements. On the work schedule provided by the employer for 10/26/09 – 11/8/09 the only employee under the age of 16 was (b) (7)(C), (b) (6). (b) (7)(C), (b) (6) scheduled hours were (b) (7)(C), (b) (6).

limited to Saturday and Sunday and not in violation of the Reg 3 hours standards (exhibit E-9). Mr. Jones claimed that 14/15-year olds were only scheduled until 7PM; he will appeal Reg 3 hours CMPs. He did not specifically question the other types of Reg 3 hours violations.

(b) (7)(C), (b) (6) date of birth – (b) (7) worked 8/29/06-present; age 15 at time of hire
(signed face-to-face interview – B-1)

Reg 3 hours: > 3 hours on a school day - as many as 4 hours; approximately 16 times (once per pay period)

Past 7PM - as late as 9PM; approximately 16 times (once per pay period)

Past 9PM - as late as 11PM; approximately 3-4 times

Reg 3 Occupation: operated fryers that did not have baskets that automatically raised and lowered - 3-4 times per hour

HO#2: drove her automobile to Dollar General in Albia at age 16 - 3-4 times

(b) (7)(C), (b) (6) date of birth – (b) (7); worked 6/2/09-08/09; age 15 at time of hire
(unsigned telephone interview – B-2)

Reg 3 hours: Past 9PM - as late as 10:30PM; 4-5 days per week

Reg 3 Occupation: operated fryers that did not have baskets that automatically raised and lowered - twice a week

operated the NEICO broiler – 4-5 days per week

(b) (7)(C), (b) (6) date of birth – (b) (7); worked 4/29/09-present; age 15 at time of hire
(signed telephone interview – B-3)

Reg 3 hours: > 3 hours on a school day - as many as 4 hours; approximately 20 times

Past 7PM – as late as midnight; twice a week

Past 9PM – as late as 11:30PM; twice a week

(b) (7)(C), (b) (6) date of birth – (b) (7)(C), (b) (6); worked as early as December 2007 - present;
(no interview) age 12 at time of hire

(b) (7) start date was reported on a listing prepared by the employer as 5/24/08 (exhibit E-4). (b) (7) was paid on the 1/5/08 payroll, so (b) (7) start date was at least December 2007. An attempt was made to interview (b) (7) but she did not return calls.

Under age employment: (b) (7) was 12 years old when she first appeared on the payroll.

(b) (7)(C), (b) (6) date of birth – (b) (7) worked 7/25/09 – 10/09; age 15 at time of hire
(C) (b)

(unsigned telephone interview – B-8)

Reg 3 hours: > 3 hours on a school day – as many as 6.75 hours; 3 days per week
Past 9PM – as late as 11:45PM; 3 days per week

Reg 3 Occupation: operated fryers that did not have baskets that automatically raised and lowered – 3 days per week

(b) (7)(C), (b) (6) date of birth – (b) (7) (C), (b) (6); worked 8/24/07 – 8/9/09; age 15 at time of hire
(signed telephone interview – B-10)

Reg 3 hours: > 3 hours on a school day – as many as 5.25 hours; 3 times per week
Past 7PM – as late as 1AM; 3-4 days per week
Past 9PM – as late as 11:15; 3-4 days per week

Reg 3 Occupation: operated fryers that did not have baskets that automatically raised and lowered – 3-4 days per week
operated the NEICO broiler – once per day, 4-5 days per week (she only cooked hamburgers for her own meal)

HO#2: drove her automobile to Dollar General in Albia at age 16 once per month; also
drove her automobile to the Chariton Hardees at age 16 two times

(b) (7)(C), (b) (6) date of birth – (b) (7) (C), (b) (6); worked 5/26/09 – 10/09; age 15 at time of hire
(signed telephone interview – B-12)

Reg 3 hours: Past 7PM – as late as 9:15PM; 1-2 days per week
Past 9PM – as late as 9:15PM; 3 days per week

Reg 3 Occupation: operated fryers that did not have baskets that automatically raised and lowered – 3 days per week

(b) (7)(C), (b) (6) date of birth – (b) (7) (C), (b) (6); worked 10/21/08 - present; age 15 at time of hire
(signed face-to-face interview – B-13)

Reg 3 hours: > 3 hours on a school day – as many as 4 hours; 3 days per week
Past 7PM – as late as 9PM; 3 days per week

Reg 3 Occupation: operated fryers that did not have baskets that automatically raised and lowered – 3 days per week

HO#2: drove (b) (7) automobile to the Albia Hy-Vee at age 16 one time

Disposition: A final conference was held by telephone on 12/16/09 with Matthew Jones, district manager. The concept of enterprise coverage was reviewed and the exemptions listed above were

discussed. Mr. Jones was advised in detail of the violations mentioned above and agreed to future compliance in all areas. Mr. Jones said that he had no knowledge of the federal child labor standards, but agreed to comply in the future.

A signed Summary of Unpaid Wages, WH-56, was mailed to the district office on 1/5/10. The payment date is 1/31/10. WH-58s were provided for use as proof of payment. Matthew Jones will be the back wage follow-up contact and can be reached at 641-932-5386. The prior investigation was a limited office audit that covered a period just over 5 years ago. Only de minimis violations were found. FLSA CMPs are not recommended.

A Notice to Employer of Employment of Minors Contrary to the FLSA was mailed to the employer on 12/21/09. These violations were discussed with the employer in detail and he was advised that CL-CMPs would be addressed in a letter from district management. As noted above, Mr. Jones took exception to the undocumented Reg 3 hours violations (specifically the 7PM standard) and will likely appeal the CL-CMP. A CL-CMP in the amount of \$14,115.00 was computed in WHISARD at a 1.0 factor.

It is recommended that a spin-off case be set up for the Chariton Hardee's. That investigation may be appropriately handled as an office audit. Mr. Jones said the Chariton location has 14 employees, all who are currently over the age of 18. In the past two years, Chariton employed one or two 16/17-year olds and no employees under the age of 16. The Chariton location also had no hours worked records prior to October 2009 and will have an issue with the YOW wage. The Chariton employees wear t-shirts provided at no cost to the employee.

(b) (7)(C), (b) (6) was notified via cell phone on 1/5/10 that the investigation had been completed. A voice mail message was left providing this investigator's phone number and the details of (b) back wage amount.

(7) It is recommended that this case be concluded upon receipt of proof of payment in the district office and the resolution of the CL-CMPs.

pubs: HRG, 516, 541, 778, 785, CL-101 with GINA insert; 2 STOP stickers; FMLA Compliance Guide, TIPS pamphlet, Fact Sheet #17G-Salary Basis of Payment, Teen Driving Poster, and the I-9 form and fact sheet

(b) (7)(C), (b)
(c)
Investigator
1/5/10

ADDENDUM

The WH-266(a) and WH-266(b) were reprinted from WHISARD to reflect the updated CMP amounts. As noted in the narrative above, the final CMP amount computed in WHISARD was \$14,115. The amount initially computed in WHISARD on 12/21/09 was \$12,485.

An office audit of the Chariton location was set up as a spin-off case. Matthew Jones, general manager, advised WHI (b) (7)(C), (b) (c) on 3/1/10 that the two Hardees locations that make up R.E.O. Enterprises were to be sold to Rising Star, L.L.C., effective 3/8/10. The office audit was dropped.

(b) (7)(C), (b)
(c)
Investigator
3/2/10

Hardees of Albia
Narrative Report

ADDENDUM II:

As noted above, the corp sold both the Albia and Chariton Hardees stores effective 3/8/10. The corp president/owner, Regina Orskog, age 72, took over the operation after her husband died in 2008, and has ceased all business operations, and does not intend to open any other businesses. She is not a 3(d) employer, having resided in Missouri and spent no time at the est's. General mgr Matt Jones was a 3(d) ER, but has no financial interest in the company, and is out of work with the sale of the stores. For these reasons, the CL/CMP was withdrawn, with RO concurrence.

Michael Staebell, DD
3/24/10