

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

O & M INDUSTRIES, INC.

5901 Ericson Way
Arcata, CA 95521

Employer

Docket No. 04-R1D5-1597

**DECISION AFTER
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code and having taken this matter under submission on Employer's petition for reconsideration, and after reviewing the entire record, hereby affirms the decision of the ALJ.

JURISDICTION

Employer, O & M Industries (Employer) operated a place of employment at 2120 Mar East, Tiburon, California. On March 16, 2004, the Division of Occupational Safety and Health (Division) conducted an investigation, and issued a citation for an alleged violation of Title 8 Cal. Code Regs 1712(c)(1). Employer timely appealed, contesting only the existence of the violation. A hearing was held on August 22, 2006, and the matter was submitted that day.

An Administrative Law Judge for the Board issued a decision dated September 28, 2006, denying Employer's appeal from a general violation of section §1712(c)(1) [exposed protruding reinforced steel bars lacking adequate covers].

On October 26, 2006, Employer filed a petition for reconsideration asserting the evidence did not support the findings of fact, that it had an additional witness to corroborate its theory of the facts, and that a Federal policy regarding multi-employer worksites required the granting of the appeal. On November 30, 2006, the Division filed an opposition to the petition for reconsideration. On December 5, 2006, the Board took the petition under submission and stayed the decision of the ALJ pending a review of the record.

BACKGROUND

Employer is a construction contractor engaged in the business of steel erecting. The Division cited Employer for failure to properly cover exposed rebar that its employees had to pass next to in order to access a ladder that provided the means of ingress and egress to a work area below grade on this residential construction site.

FINDINGS AND REASONS FOR DECISION

The ALJ fully considered the contentions raised by the Employer in its petition. The Appeals Board has considered the decision of the ALJ and the record in light of the Employer's petition for reconsideration and affirms the ALJ's summary of evidence, rulings, findings, and conclusions and **adopts** the **decision** in its entirety. Accordingly, the ALJ's decision is attached and incorporated herein by reference.

DECISION AFTER RECONSIDERATION

The decision of the ALJ dated September 28, 2006, denying Employer's appeals and imposing a civil penalty, is reinstated and affirmed.

CANDICE A. TRAEGER, Chairwoman
ART R. CARTER, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: AUGUST 13, 2010