

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

GRANITE ROCK COMPANY
P.O. Box 50001
Watsonville, CA 95077

Employer

Dockets. 08-R1D3-3675 through 3687

DECISION AFTER
RECONSIDERATION
and
ORDER OF REMAND

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code and having taken the petition for reconsideration filed by Granite Rock Company (Employer) matter under submission, renders the following decision after reconsideration.

JURISDICTION

Beginning on June 4, 2008, the Division of Occupational Safety and Health (Division) conducted an accident inspection at a place of employment in South San Francisco, California maintained by Employer. On September 3, 2008, the Division issued 13 citations to Employer alleging violations of workplace safety and health standards codified in California Code of Regulations, Title 8, and proposing civil penalties.¹

Employer filed timely appeals of the citations.

No proceedings were held. On or about February 9, 2010, the Administrative Law Judge (ALJ) received the parties' summarized settlement agreement. On May 10, 2010, the ALJ issued an Order capturing the agreement of the parties. On June 9, 2010 Employer timely filed a petition for reconsideration of the ALJ's Order. The Board issued an Order of Remand on June 15, 2011, finding that the ALJ's Order of May 10, 2010 was issued in error, and did not fully and correctly reflect the stipulations of the parties. An Order After Remand was issued on December 22, 2011. Employer timely filed a petition for reconsideration of the ALJ's Order After Remand. The Division filed an answer to the petition, agreeing that the Order After Remand contained an inadvertent omission.

¹ Unless otherwise specified, all references are to California Code of Regulations, Title 8.

ISSUE

Should the omission made in the Order After Remand be corrected?

DECISION AFTER RECONSIDERATION

In making this decision, the Board relies upon its independent review of the entire evidentiary record in the proceeding. The Board has taken no new evidence. The Board has also reviewed and considered Employer's petition for reconsideration and the Division's answer to it.

Labor Code section 6617 sets forth five grounds upon which a petition for reconsideration may be based:

- (a) That by such order or decision made and filed by the appeals board or hearing officer, the appeals board acted without or in excess of its powers.
- (b) That the order or decision was procured by fraud.
- (c) That the evidence does not justify the findings of fact.
- (d) That the petitioner has discovered new evidence material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.
- (e) That the findings of fact do not support the order or decision.

Employer petitioned for reconsideration on the basis of Labor Code section 6617(a) and (e). Specifically, Employer argues the ALJ acted in excess of his powers by issuing an Order After Remand that did not fully and accurately reflect the settlement agreement reached by the parties. The Division is in agreement that the Order After Remand is not an accurate reflection of the settlement agreement reached by the parties.

We therefore **remand** this matter to the ALJ for issuance of an amended Order After Remand and amended Summary Table. It is further ordered that the Order of the ALJ, dated December 22, 2011, is stayed pending issuance of a corrected Order After Remand.

ED LOWRY, Board Member
JUDITH S. FREYMAN, Board Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: October 22, 2013