

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

STENDERUP AG PARTNERS
14820 S. Edison Road
Bakersfield, CA 93307

Employer

Docket No. 09-R6D2-2112

**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 reconsideration on its own motion, renders the following decision after reconsideration.

JURISDICTION

On June 2, 2009, the Division of Occupational Safety and Health (the Division) issued to Stenderup AG Partners (Employer) two Citations alleging three violations of Title 8, Cal. Code of Regulations. On June 9, 2009, the Division issued an Amendment to Citation 2, Item 1. Employer filed timely appeals contesting all three Items in the two Citations.

The matter came on for a regularly scheduled pre-hearing conference before an Administrative Law Judge (ALJ) for the Board, wherein the parties reached a settlement. On July 29, 2009, the ALJ memorialized the terms of the settlement in an Order, and an attached summary table. In the Order, the ALJ stated "Good cause having been shown, the stipulation of the parties quoted below is accepted and the matter is resolved as set forth in the attached summary table." However, neither the Order nor the summary table specified the nature of the good cause justifying the withdrawal of Citation 2, Item 1, as amended.

On August 25, 2009, the Board on its own motion ordered reconsideration of the ALJ's Order pertaining to the existence of good cause for the withdrawal of Citation 2, Item 1.

The Division submitted an Answer to the Order of Reconsideration dated September 29, 2009, explaining the reasons for the withdrawal of Citation 2, Item 1.

ISSUE

Whether there was good cause for the withdrawal of Citation 2, Item 1.

DECISION AFTER RECONSIDERATION

Board Regulation 364.2 states “(a) Upon a showing of good cause, the Appeals Board may dispose of the issues on appeal by granting a written motion of the parties made at any time, or an oral motion of the parties made on the hearing record or in the prehearing conference.” Absent allegations or indications of fraud, the Board has recognized the Division’s prosecutorial discretion to withdraw citations as part of negotiated settlements. (*Northern California Paper Recyclers, Inc.*, Cal/OSHA App. 09-2352, Denial of Petition for Reconsideration (Jun. 1, 2010); *California Dept. of Forestry*, Cal/OSHA App. 85-1379, Denial of Petition for Reconsideration (Aug. 28, 1986).) At the prehearing conference the Division determined, based on new information from the Employer, that there was insufficient evidence to sustain the violation, and thus exercised its prosecutorial discretion and withdrew Citation 2, Item 1. It appears appropriate in this record to accept the agreement and stipulation of the parties. (*E & H 126 Investment Inc*, Cal/OSHA App. 08-3994, Denial of Petition for Reconsideration (Jul. 30, 2009); see also *County of Sacramento v. Workers’ Comp. Appeals Bd.* (3rd Dist. 2000) 77 Cal.App.4th 1114.)

Therefore, ALJ’s Order is affirmed and is reinstated, with amendment to the summary table memorializing that new information provided by Employer supports the ALJ’s finding of good cause underlying the withdrawal of Citation 2, Item 1, by the Division.

CANDICE A. TRAEGER, Chairwoman
ARTHUR CARTER, Board Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

FILED ON: JANUARY 19, 2011