

**BEFORE THE  
STATE OF CALIFORNIA  
OCCUPATIONAL SAFETY AND HEALTH  
APPEALS BOARD**

In the Matter of the Appeal of:

METHODIST HOSPITAL OF SO. CA  
300 Huntington Drive  
Arcadia, CA 91007

Employer

Docket No. 10-R4D2-1868

**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 April 6, 2010, the Division of Occupational Safety and Health (the Division) initiated an inspection at a place of employment maintained by Methodist Hospital (Employer) after receiving, on March 30, 2010, a report of a serious injury suffered by one of Employer's employees on March 26, 2010. One Citation having two Items was issued alleging two violations of California Code of Regulations, title 8. Employer filed a timely appeal contesting both Items in the Citation.

This matter came on regularly for a scheduled status conference before an Administrative Law Judge (ALJ) for the Board. The parties stipulated to the following facts:

1. The date of injury was March 26, 2010.
2. The injury was reportable; the employee had surgery on the date of the accident and remained in the hospital for more than 24 hours.
3. Employer reported the injury on March 30, 2010.
4. Employer has now installed a new automatic reporting procedure.
5. Employer followed up with the employee in the emergency room and assisted the employee with the necessary paperwork.
6. The delay in reporting was caused by problems with Employer's personnel administration.

7. Employer is a large employer, but is struggling financially and has had to lay off employees.
8. The violation has been abated to the Division's satisfaction.
9. Employer has a good safety history.
10. The delay in reporting did not impede the Division's investigation.
11. Employer is a non-profit organization.
12. The injured employee has returned to work.
13. The parties did not object to the ALJ exercising her authority under *Bill Callaway & Greg Lay dba Williams Redi Mix*, Cal/OSHA App. 03-2400 Decision After Reconsideration (Jul. 14, 2006), and *Trader Dan's dba Rooms N Covers, Etc*, Cal/OSHA App. 08-4978, Decision After Reconsideration (Oct. 8, 2009) (*Trader Dan's*) to modify the penalty.

The ALJ accepted the settlement of the parties regarding Citation 1, Item 2 [section 3273(a) [slippery floor]] but reduced the penalty for Citation 1, Item 1 (section 342(a) [employer required to report serious injuries to the Division within 8 hours]) to \$1000.00.

The Board ordered reconsideration on its own motion to consider the following issues:

1. Did the ALJ's Order properly give penalty relief, under Board precedent, based on Employer's status as a non-profit?
2. Whether the ALJ properly applied Board precedent regarding the punitive nature of penalties?
3. Whether the ALJ's Order adequately explains its reasoning, and applies the reasoning and factors of *Trader Dan's, supra*, in determining an appropriate penalty?

The Division filed an Answer to Order of Reconsideration. Employer did not.

### **DECISION AFTER RECONSIDERATION**

1. Penalty relief for the Employer's status as a non-profit entity is not appropriate under *Trader Dan's dba Rooms N Covers*, Cal/ODHA App. 08-4978 Decision After Reconsideration (Oct. 8, 2009).

The factors enunciated in prior Board decisions that consider appropriate penalty relief for late reporting of a serious injury do not identify the non-profit status of an employer as a relevant factor. In *Trader Dan's, supra*, we considered the appropriate factors to consider in setting the penalty for a violation of section 342(a) caused by the failure of an employer to report. Included in that list is consideration of the Employer's effort to comply with the reporting requirement, factors that prevented or impeded reporting, the extent and nature of the non-compliance, the effect of the non-compliance on the

Division's ability to investigate, employer's concern for safety, employer's history, and employer's size. We considered these factors to be among the facts that would help set a penalty amount in furtherance of the purposes of the Act, and would encourage reporting. We recognized that an employer who did not report in the 8 hours allotted by the regulation would be faced with a choice of reporting late and facing a certain fine of \$5000, or not reporting at all in hopes of avoiding the \$5000 fine altogether. (*Trader Dan's, supra.*) We felt it furthered the purpose of the act to consider the circumstances of each case in determining if the full \$5000 proposed penalty was needed as a way to alleviate this difficult choice and obtain more widespread compliance with the reporting requirement. (*Stockton Tri Industries, Inc., Cal/OSHA App. 02-4946, Decision After Reconsideration (Mar. 27, 2006).*)

Factors that do not bear on that choice of reporting late or not at all would not be appropriate additional factors to consider in setting the initial penalty. Here, the Employer's status as a non-profit business is not among the factors we have previously identified as justifying reduction of the proposed \$5000 penalty. The financial circumstances of an employer can be relevant to a claim of financial hardship. (*Stockton Tri Industries, supra.*) However, for profit and non-profit businesses can both either be financially sound or face significant financial hardship. For either, evidence of the financial condition would have to be presented to justify a claim of financial hardship. (*Stockton Tri Industries, supra.*) We note here Employer did not make a claim of financial hardship. There is no basis to reduce the penalty based on its financial or business status. The decision lists the financial condition and non-profit status of Employer as part of the basis for reducing the penalty, which we find to be error.

2. Whether a penalty is punitive is resolved by evaluating the factors for penalty reduction articulated in *Trader Dan's, Bill Calloway, and Stockton Tri.*

The Order recites summarily on page three that "(1) a penalty of \$5000.00 is not required to encourage future compliance, and (2) a penalty over \$1000.00 would be punitive." However, according to the analytical steps set forth in *Trader Dan's*, summary or general statements do not rebut the presumption of correctness of the Division's proposed penalty. Specific factors, however, can rebut the presumption and support the imposition of a reduced penalty. (*Stockton Tri Industries, supra.*) We note that in the late report context, as well as in the no report context, factors can justify reductions from the \$5000 proposed penalty. The same factors can justify greater reductions in the late-report context than in a no-report context. (*Melmarc Products, Inc., Cal/OSHA App. 09-2878, Decision After Reconsideration (May 12, 2010); See Bill Calloway and James Lay dba Williams Redi Mix, Cal/OSHA App. 03-2400 Decision After Reconsideration (Jul 14, 2006).*) In all cases, only relevant evidence may be considered.

The factors justifying reductions of a greater amount, \$300 to \$400 each, in this record include the efforts of the Employer to report and not to hide the injury, the assistance provided to the injured employee, the safety history of the employer, employer's abatement of the violation(s), lack of a negative impact on the Division's investigation, and the fact that no one other than the Employer reported the injury. Thus, Employer chose not to try to hide the injury, which is the behavior the safety order is intended to encourage. It appears to be an innocent error, resulting from administrative oversight rather than any intention to hide the injury. A reduction of \$2400 (\$400 for six factors) reduces the penalty to \$2,600, an amount that is not punitive according to Board precedent. Employer is a large employer and so does not qualify for additional penalty reduction based on size.

3. The detailed reasoning based on Board precedent justifies some reduction.

The Labor Code requires a decision of an ALJ to be in writing and to contain the reasons or grounds upon which the decision was made. (Labor Code 6608.) When, as here, the list of facts identified as a basis for the decision includes facts not relevant to the determination before the ALJ, we draw the inference that the summary conclusions that follow are not properly reasoned conclusions. Since 13 stipulations contained only six factors relevant to reducing the proposed penalty, we conclude the summary conclusion that "a penalty in excess of \$1000.00 would be punitive" insufficiently considers each relevant factor.

Therefore, we affirm the proposed settlement of Citation 1, Item 2 [3273(a)] in the amount of \$150.00 proposed by the Division after it increased the credit allowed for Employer's good faith, and we reduce the proposed penalty for the 342(a) violation to \$2600.00 based on the foregoing analysis, for a total penalty of \$2,750.

We attach and incorporate by reference a **revised** Summary Table.

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

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
FILED ON: MARCH 30, 2011