

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

In the Matter of the Appeal of:

JOSH AND CARRIE SALAZAR
dba CJ MANUFACTURING
17012 Darwin Avenue, #2 & 3
Hesperia, CA 92345

Employer

Docket. 09-R6D2-1710

**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 ordered reconsideration of the Decision in the above-entitled on its own motion, renders the following decision after reconsideration.

JURISDICTION

Beginning on February 23, 2009, the Division of Occupational Safety and Health (Division) conducted an accident inspection at a place of employment in Hesperia, California maintained by Employer. On April 17, 2009, the Division issued one citations – five items to Employer alleging violations of workplace safety and health standards codified in California Code of Regulations, Title 8, and proposing civil penalties.¹

Citation 1, Item 3 alleged a General violation of section 3203(a) [No Illness and Injury Prevention Plan]. A penalty of \$85 was proposed by the Division.

Employer filed timely appeals of the citation and each of the five items.

Administrative proceedings were held, including a contested evidentiary hearing before an Administrative Law Judge (ALJ) of the Board. After taking testimony and considering the evidence and arguments of counsel, the ALJ issued a Decision on February 26, 2010. The Decision denied Employer's appeal and upheld the general classification of Citation 1, Item 3, imposing a civil penalty of \$85.

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

At a meeting held on March 17, 2010, the Board ordered reconsideration of the Decision of the ALJ's decision on its own motion. The Division filed an answer to the petition.

ISSUE

Whether the ALJ's finding—that Employer was not required to maintain a written Injury and Illness Prevention Program (IIPP)—was correct?

EVIDENCE

The Decision summarizes the evidence adduced at hearing in detail. We summarize that evidence briefly below, focusing on the portions relevant to the issue presented.

Division inspector Zohra Ali testified that Employer had only one employee on the date of the inspection. Ali requested a copy of Employer's IIPP from Employer, but did not receive a copy.

Josh Salazar and his wife own CJ Manufacturing. Salazar testified that generally, Employer does not engage any employees, but occasionally has a friend come and work, for pay, when they need help. Elliott was the friend helping out during the inspection. Salazar testified that he believed Elliott was just as knowledgeable about the iron industry and metal working as he was, and knew common sense precautions, such as donning safety goggles and gloves. He did not have employees who necessitated an IIPP, as he provides any needed safety checks when friends agree to work for Employer.

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 the Division's answer to the order of reconsideration.

Section 3203(a) reads as follows:

(a) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum:

(1) Identify the person or persons with authority and responsibility for implementing the Program.

(2) Include a system for ensuring that employees comply with safe and healthy work practices. Substantial compliance with this provision includes recognition of employees who follow safe and healthful work practices, training and retraining programs, disciplinary actions, or any other such means that ensures employee compliance with safe and healthful work practices.

(3) Include a system for communicating with employees in a form readily understandable by all affected employees on matters relating to occupational safety and health, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal. Substantial compliance with this provision includes meetings, training programs, posting, written communications, a system of anonymous notification by employees about hazards, labor/management safety and health committees, or any other means that ensures communication with employees.

EXCEPTION: Employers having fewer than 10 employees shall be permitted to communicate to and instruct employees orally in general safe work practices with specific instructions with respect to hazards unique to the employees' job assignments as compliance with subsection (a)(3).

(4) Include procedures for identifying and evaluating work place hazards including scheduled periodic inspections to identify unsafe conditions and work practices. Inspections shall be made to identify and evaluate hazards.

(A) When the Program is first established;

EXCEPTION: Those employers having in place on July 1, 1991, a written Injury and Illness Prevention Program complying with previously existing section 3203.

[...]

Based on the language of section 3203(a)(3), the ALJ found that employers with fewer than 10 employees are not required to have a written IIPP, but may communicate the IIPP orally.² This is an incorrect reading of the safety order. Viewing the regulation in its entirety, it becomes clear that this “exception” is applicable only to section 3203(a)(3). The language specifically

² The ALJ found, and we agree, that an employee/employer relationship between Elliott and Employer was established. (*Nash Construction Co., Inc.*, Cal/OSHA App. 80-973, Decision After Reconsideration (Feb. 8, 1985), Labor Code section 6304.1). Elliott acknowledged to Ali that he was paid by Salazar, and Salazar admitted to directing the work of his friends, whom he paid.

states that those employers with less than 10 employees may forgo designing multiple routes to employee communication related to occupational health and simply engage in face to face discussions, “as compliance with subsection (a)(3).”

The language of section 3203(a) has no exception, and calls for an IIPP program to be established by every employer, which *shall* be in writing. Further provisions for small employers with less than 10 employees are found in section 3203 at 3203(b)(1) [Employers with fewer than 10 employees may elect to maintain the inspection records only until the hazard is corrected], and section 3203(b)(2) [Employers with fewer than 10 employees can substantially comply with the documentation provision by maintaining a log of instructions provided to the employee with respect to the hazards unique to the employees' job assignment when first hired or assigned new duties]. The exceptions would make little sense in the overall scheme of section 3203 if employers with less than 10 employees were not required to maintain a written IIPP, per section 3203(a).

As the ALJ’s decision found, Employer failed to comply with section 3203, as it admittedly did not have a written IIPP. Therefore, we affirm the result of Decision sustaining the citation but for the different reasons stated above.

ART CARTER, Chairman
ED LOWRY, Board Member
JUDITH S. FREYMAN, Board Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
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