

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

In the Matter of the Appeal of:

GEO PLASTICS
2200 East 52nd Street
Los Angeles, CA 90058

Employer

Docket. 13-R6D2-0810

**DENIAL OF PETITION
FOR RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code hereby denies the petition for reconsideration filed in the above entitled matter by Geo Plastics (Employer).

JURISDICTION

Commencing on December 14, 2012 the Division of Occupational Safety and Health (Division) began an inspection of a place of employment in California maintained by Employer.

On February 21, 2013, the Division issued a citation to Employer alleging a regulatory violation of section 342(a) [failure to report serious workplace injury to Division] of the occupational safety and health standards codified in California Code of Regulations, Title 8.¹

Employer timely appealed.

Thereafter administrative proceedings were held before an Administrative Law Judge (ALJ) of the Board, including a duly-noticed contested evidentiary hearing on December 19, 2013.

On January 21, 2014, the ALJ issued a Decision which upheld the alleged violation and imposed a civil penalty.

Employer timely filed a petition for reconsideration.

¹ References are to California Code of Regulations, Title 8 unless specified otherwise.

The Division did not answer the petition.

ISSUE

Is ignorance of the reporting requirement established in section 342(a) a defense to the citation?

REASON FOR DENIAL OF PETITION FOR RECONSIDERATION

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's petition does not state any of the bases set forth in Labor Code section 6617 above, which is grounds sufficient to deny the petition. (Labor Code sections 6616 [petition must set forth in detail grounds for petition], 6617; *UPS*, Cal/OSHA App. 08-2049, Denial of Petition for Reconsideration (Jun. 25, 2009), citing, *Bengard Ranch, Inc.*, Cal/OSHA App. 07-4596, Denial of Petition for Reconsideration (Oct. 24, 2008).) For present purposes we construe Employer's petition to assert that the ALJ acted in excess of her authority in rendering the Decision.

The Board has fully reviewed the record in this case, including the arguments presented in the petition for reconsideration. Based on our independent review of the record, we find that the Decision was based on a preponderance of the evidence in the record as a whole and appropriate under the circumstances.

The facts giving rise to the citation were stipulated to by the parties and are not disputed in Employer's petition. One of Employer's employees suffered serious injury as defined in Labor Code section 6302(h) at Employer's workplace, and Employer did not report the injury to the Division because he did not know he was required to do so.

In its petition for reconsideration Employer argues that he did not know of the reporting requirement, and further that the Division did not inform him of it during discussions of other workplace safety requirements.

First, ignorance of the law, including this reporting requirement, is no excuse for non-compliance. (*Abdul G. Zadeh dba Island Auto Parts Warehouse, Inc.*, Cal/OSHA App. 12-1213, Denial of Petition for Reconsideration (Apr. 26, 2013), citing *Nick's Lighthouse*, Cal/OSHA App. 05-3086, Denial of Petition for Reconsideration (Jun. 8, 2007).) Employers are presumed to know the safety orders applicable to their operations. (*Crown Disposal Company, Inc.*, Cal/OSHA App. 86-9017, Denial of Petition for Reconsideration (Oct. 9, 1986).) Persons who avail themselves of the privilege of doing business in California are held to knowledge of the law's requirements. (*Robinson v. Fair Employment & Housing Commission* (1992) 2 Cal.4th 226, 244; see *Construction Financial, LLC v. Perlite Plastering Co., Inc.* (1997) 53 Cal.App.4th 170, citing *Hydrotech Systems Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988.)

Second, there is no provision in the California Occupational Safety and Health Act, Labor Code § 6300 and following, which requires the Division to inform an employer of all applicable provisions of the Act and the safety orders promulgated under its authority when it discusses compliance questions or issues which such employer. It is not a defense, therefore, that the Division did not inform Employer of the section 342(a) reporting requirement during discussion of other applicable requirements.

DECISION

For the reasons stated above, the petition for reconsideration is denied.

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

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: MARCH 24, 2014