

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

In the Matter of the Appeal of:

PERSONNEL PLUS, INC.  
12052 E. Imperial Highway, Suite 200  
Norwalk, California 90650

Employer

Docket. 11-R3D5-1302

**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 the petition for reconsideration filed by Personnel Plus, Inc. (Employer) matter under submission, renders the following decision after reconsideration.

**JURISDICTION**

Beginning on March 25, 2011, the Division of Occupational Safety and Health (Division) conducted an accident inspection at a place of employment in Carson, California maintained by Employer. On May 11, 2011, the Division issued one citation to Employer alleging a violation of workplace safety and health standards codified in California Code of Regulations, Title 8, and proposing civil penalties.<sup>1</sup>

The citation alleged a Regulatory violation of section 3203(b)(2) [failure to maintain documentation of employee safety and health training].

Employer filed timely appeals of the citation.

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 October 9, 2012. The Decision denied Employer's appeal and upheld its regulatory classification, imposing a civil penalty of \$375.

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

Employer timely filed a petition for reconsideration of the ALJ's Decision. The Division did not file an answer to the petition.

### **ISSUE**

1. Were Employer's Due Process Rights Violated?
2. Did the Employer Present Records of Safety and Health Training to the Division Which Met the Requirements of Section 3203(b)(2)?

### **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.

Employer is a primary employer staffing agency located in Carson, California. On April 19, 2011, the Division's inspector, Onkar Bhaskar (Bhaskar) conducted an investigation related to an injury at Kelly Global, the secondary employer of Employer's employees.<sup>2</sup> Employees at Kelly Global were engaged in warehousing work. At the initial opening conference, representatives of both Kelly Global and Employer were present, with Elena Lupe Cardenas (Cardenas) of Personnel Plus participating by telephone. Bhaskar later hand-delivered a document request form to Cardenas, seeking safety and health training records for employee Jose Ramos. (Ex. 2).

Employer submitted a document entitled "Lista de Instrucciones Para Empleado Nuevo de Personnel Plus" (hereafter referred to as "Lista de Instrucciones") and another document entitled "Examen De Seguridad" in response to the Division's request. (Ex. 3). These two documents include the signature of Jose Ramos, illegible signatures by a supervisor, and a date of training. Employer also submitted an "Acknowledgment of Receipt and Review of Code of Safe Practices" (in English), not filled out by any employee, as well as a code of safe practices for general industry, and a "New Employee Checklist" which is identical to the "Lista de Instrucciones," except that the English version does not include a box for heat illness prevention training. (Ex. 3.) Bhaskar testified that he did not receive the "New Employee Checklist" (in English) until approximately one year after receiving the documents Ramos had signed.

Ericka Montoya (Montoya), an account executive for Employer, testified that the supervisor/trainer signatures on Ramos' documents were hers, and that she administered training to new employees and applicants. She stated that the company had identical documents in English and Spanish. Montoya

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<sup>2</sup> The parties stipulated to the primary/secondary employer relationship. (Decision, p. 2).

testified that she reviewed a training video and materials with employees before going over the checklist and exam with the employees, either in English or Spanish. She also testified that she would ask follow-up questions if the employee seemed confused about a topic, and employees would often have questions for her. Montoya herself received health and safety training approximately twice a year from a safety expert brought in by Employer.

The Division questioned Montoya as to why Ramos had signed for training on February 18, 2010, but had a start date of March 5, 2010. Montoya explained that an employee may be trained before he or she is hired if there is no immediate position open at the secondary employer for the employee. She stated that all of the positions that they send their employees to were in the same industrial field of work.

### **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.

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 (c), (d) and (e).

#### **1. Were Employer's Due Process Rights Violated?**

Employer argues that its due process rights were violated by the Division's failure to describe with particularity the nature of the alleged section 3203(b)(2) violation. The section of the safety order reads as follows:

- (b) Records of the steps taken to implement and maintain the Program shall include:  
[...]

(2) Documentation of safety and health training required by subsection (a)(7) for each employee, including employee name or other identifier, training dates, type(s) of training, and training providers. This documentation shall be maintained for at least one (1) year.

The citation itself alleges that “[t]hese documents were requested orally and in writing on April 19, 2011. As of May 10, 2011 these documents had not been provided by the employer.” This is a regulatory violation; under section 334(a), regulatory violations are those “other than one defined as Serious or General that pertains to permit, posting, recordkeeping, and reporting requirements as established by regulation or statute.”

Employer is correct in stating that a citation must give an employer notice of the allegation it must defend against. (*Rex Moore Electrical Contractors and Engineers*, Cal/OSHA App. 07-4314, Denial of Petition for Reconsideration (Nov 4, 2009).) Here, the citation both references the safety order alleged to have been violated, and specifies nature of the charge—that Employer failed to present documentation which met the requirements listed in 3203(b)(2). For purposes of adequacy of notice, the information in the citation is enough to put Employer on notice of the nature and substance of the charge, and gives Employer the ability to formulate a defense. (*Granite Construction Co.*, Cal/OSHA App. 07-3611, Denial of Petition for Reconsideration (Jun. 22, 2010), *DSS Engineering Contractors*, Cal/OSHA App. 99-1023, Decision After Reconsideration (Jun. 3, 2002).) Employer has been provided adequate due process.

The Employer also describes what it believes to be new evidence in its petition for reconsideration. (Labor Code section 6671(d).) This new evidence is a model IIPP promulgated by the Division. The Board may consider new evidence if a party demonstrates that it "could not, with reasonable diligence, have discovered and produced the evidence at the hearing." (Labor Code, section 6617(d); *Polvera Drywall Corp dba Great Western Drywall*, Cal/OSHA App. 90-1246, Decision After Reconsideration (Sep. 6, 1991).) Employer has not shown that it was unable to discover and produce this document prior to hearing. The Board will not consider this document in reaching its decision.

## **2. Did the Employer Present Records of Safety and Health Training to the Division Which Met the Requirements of Section 3203(b)(2)?**

The regulatory citation at issue is not related to Employer’s training program itself, but rather its recordkeeping of training that employees completed. There is no dispute that Personnel Plus, as the primary employer in this dual employer context, has a responsibility to train employees both in general safe work practices and in recognizing and responding to unique

hazards that apply to the work its employees will perform for the secondary employer. (*Aida Personnel Services*, Cal/OSHA App. 90-1226, Decision After Reconsideration (Aug. 4, 1992).) Section 3203(b)(2) requires that documentation be kept for all health and safety training required by section 3203(a)(7), and that the documentation include the employee name or other identifier, training dates, type(s) of training, and training providers.

Here, Employer initially responded to the Division's request for training records for employee Ramos by providing the "Lista de Instrucciones" and "Examen de Seguridad" that Ramos had completed with Montoya during the application process. The "Lista de Instrucciones" confirms that Ramos had been instructed in the Employer's safety policies and program, safety rules both general and specific to his assignment, personal protective gear, how to report injuries, specific job hazards, safe operation of equipment, heat illness prevention, and other topics related to occupational health and safety—18 such topics in total. (Ex. 3). The "Examen de Seguridad" reiterates that Ramos has reviewed the Employer's safety policies and program, safety rules, emergency action plan, fire prevention plan, and had completed general and specific safety training. (Ex. 3.) Both documents include the date, name of employee (Ramos), and signature of the trainer (Montoya).

While the training appears to have occurred on February 18, 2010, shortly before Ramos was to begin work on March 5, 2010, there is no requirement in the safety order that training be held on the first day of employment.<sup>3</sup> (Ex. 3.) The third document provided by Employer, which is blank, and in English, confirms receipt of the code of safe practices—this information is covered in the two documents that Ramos did sign in Spanish, and appears to be duplicative insofar as it once again acknowledges receipt of the Employer's safety policies and program.

The documents signed by Ramos were provided to the Division in Spanish. Bhaskar testified that he was able, and routinely did, seek the assistance of a bilingual coworker to review documents in Spanish. While common sense should have guided Employer to immediately send along an English language version of all documents, rather than waiting a year to do so, the Division is well aware that many Employers provide training and related documentation to its employees in their native language-- often Spanish-- in order to ensure that their employees are properly trained in the health and safety regulations enforced by the Division. Failure to provide training that an employee can easily understand would run afoul of the dictates of section 3203.

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<sup>3</sup> Federal and/or State labor standards not enforced by this Board presumably ensure that Ramos was compensated for all mandatory training time, even if he were not yet officially employed by the secondary employer on the date of training.

The preponderance of the evidence shows that Employer has complied with its responsibility to maintain training documents, and has provided those documents related to Ramos to the Division. The Board grants Employer's appeal. The civil penalty of \$375 is vacated.

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

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
FILED ON: June 30, 2014