

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

In the Matter of the Appeal of:

CORONADO IRRIGATION SERVICES, INC.
410 Louise Street
Shafter, CA 93623

Employer

Dockets. 09-R4D2-0385
through 0387

**DECISION AFTER
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (“Board”), acting pursuant to authority vested in it by the California Labor Code ordered reconsideration of the Decision of the Administrative Law Judge in the above-entitled matter on its own motion. After considering the matter, the Board renders the following Decision After Reconsideration:

JURISDICTION

Coronado Irrigation Services, Inc. (“Employer”) waters crops grown on ranches, and installs irrigation systems. On December 19, 2008, the Division commenced an inspection at a place of employment maintained by Employer. The Division cited employer for violating workplace safety and health standards codified in California Code of Regulations, Title 8, and proposing civil penalties.¹ Pertinent here, the Division cited Employer for violating multiple field sanitation standards contained in section 3457. Citation 1, Item 5 alleged a general violation of section 3457(c)(1)(C) [failure to provide single use cups]; Citation 1, Item 6 alleged a general violation of section 3457(c)(3)(C) [failure to provide toilet paper]; Citation 1, Item 7 alleged a general violation of section 3457(c)(3)(G)(3) [failure to provide soap or cleansing agent and single use towels]; and, Citation 1, Item 8 alleged a general violation of section 3457(c)(2)(A) [failure to provide toilet and hand washing facilities].

Employer filed a timely appeal of the citations. Administrative proceedings were held, including a contested evidentiary hearing before an Administrative Law Judge (“ALJ”) of the Board. At the hearing, Employer did not contest the existence of the violations. Employer made a plea of financial

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

hardship, and introduced evidence in support of the plea. After taking testimony and considering the evidence and arguments of counsel, the ALJ issued a Decision. Based on Employer's financial hardship plea, and evidence adduced thereon, the ALJ reduced the penalties for the aforementioned violations in her Decision. The Board took this matter under submission on its own motion.

ISSUES

- 1) Was the reduction in penalties for Citation 1, Items 5 through 8 permissible and consistent with the Labor Code?**

EVIDENCE

As discussed above, Employer received four citations for violation of field sanitation standards contained in section 3457. At the hearing, Employer did not contest the existence of the aforementioned violations. Therefore, the violations have been established by operation of law. (*See e.g., Pacific Cast Products, Inc.*, Cal/OSHA App. 99-2855, Denial of Petition for Reconsideration (Jul. 19, 2000).) Employer made a plea of financial hardship and introduced evidence thereon. Based on Employer's financial hardship plea and the submitted evidence, the ALJ reduced the penalty for each violation from \$750.00 per violation to \$375.00 per violation for Citation 1, Items 5 through 8.

DECISION AFTER RECONSIDERATION

In making this decision, the Board relies upon its independent review of the entire evidentiary record in this proceeding. The Board has taken no new evidence.

The only issue presented for reconsideration is whether the ALJ erred when she reduced the penalty for Citations 1, Items 5 through 8 from \$750 to \$375, based on Employer's claim of financial hardship. Citations 1, Items 5 through 8 all pertain to violations of the field sanitation standards contained in section 3457.

The ALJ relied on Labor Code section 6602, and cases interpreting it, to determine that she had authority to reduce the penalties for Citations 1, Items 5 through 8 based upon Employer's financial distress. (*See, Stockton Tri Industries, Inc.*, Cal/OSHA 02-4946, Decision After Reconsideration (Mar. 27, 2006).) She determined that a reduction in penalties "[f]urtheres the purposes of the Cal/OSHA Act." However, we find that the ALJ erred by reducing the aforementioned penalties in this case.

The ALJ did not have authority to reduce the penalties for violations of field sanitation standards below \$750. While Labor Code section 6602, and cases interpreting it, generally permit the Board to reduce penalties due to various considerations, including proven financial distress, that right does not extend to reducing penalties for violations of field sanitation standards. The penalties for violation of field sanitation standards are specifically governed by Labor Code section 6712(d)(1). That section states:

Notwithstanding Sections 6317 and 6434, any employer who fails to provide the facilities required by the field sanitation standard shall be assessed a civil penalty under the appropriate provisions of Sections 6427 to 6430, inclusive, **except that in no case shall the penalty be less than seven hundred fifty dollars (\$750) for each violation. (emphasis added.)**

The aforementioned mandatory statutory language precludes the Board from reducing a penalty to an amount less than \$750 for each violation. Labor Code section 6602 does not provide authority to contradict the mandate contained in Labor Code section 6712. Labor Code section 6712 is a more specific statute that was adopted at a later time, and the rules of statutory construction provide that, “[A] later, more specific statute controls over an earlier, general statute.” (*Bonner v. County of San Diego*, (2006) 139 Cal. App. 4th 1336, 1344-1345.)

The net result is that the Legislature has limited the Board’s authority to reduce penalties for violations of field sanitation standards below \$750. (*See also, Emerald Produce Company, Inc.*, Cal/OSHA App. 96-2679, Decision After Reconsideration (May 4, 1999).)

The Decision of the ALJ dated September 29, 2009, is reversed as to the reduction in the civil penalties for Citations 1, Items 5 through 8, and a civil penalty of \$750 is assessed against Employer for each violation found in Citations 1-5 through 1-8. In all other respects, the decision is affirmed.

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

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