

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

In the Matter of the Appeal of:

EMPLOYER SOLUTIONS  
STAFFING GROUP II, LLC  
7301 Ohms Lane, Suite 405  
Edina, MN 55439

FASTEMPS INC.  
7828 Haven Avenue, Suite 103  
Rancho Cucamonga, CA 91730

Employers

Docket. 2012-R3D6-3207

Docket. 2012-R3D6-3208

**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 on its own motion, and additionally having taken Petitioners' joint petition for reconsideration under submission, renders the following decision after reconsideration.

**JURISDICTION**

Employer Solutions Staffing Group II, LLC (ESSG) and Fastemps, Inc. (Fastemps) (collectively referred to as Petitioners) are engaged in the business of employee staffing. On approximately April 10, 2012, the Division of Occupational Safety and Health (Division), through Associate Safety Engineer Carmen Cisneros (Cisneros), commenced a workplace inspection following the report of an accident by Hill Phoenix, a separate employer.

On September 28, 2012, the Division issued citations to Petitioners alleging violations of workplace safety and health standards codified in the California Code of Regulations, Title 8, and proposing civil penalties.<sup>1</sup> Citation 1, Item 1 to each Petitioner alleged a violation of section 342(a) [failure to report a serious injury]. Citation 1, Item 2 alleged a violation of section 3203(a)

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

[failure to establish, implement, and maintain an injury and illness prevention program].<sup>2</sup>

Petitioners filed timely appeals contesting the citations. The matters were consolidated. 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 September 28, 2015. The Decision denied Petitioners' appeals and affirmed the citations.

The Board ordered reconsideration of the ALJ's Decision on its own motion, asking "Are either Employer Solutions Staffing Group II, LLC. or Fastemps Inc. subject to citation by the Division under the circumstances of this matter?" The Board additionally asked "Is the summary table attached to and incorporated into the ALJ's decision correct?"

Petitioners also filed a Petition for Reconsideration raising two issues: "1) Was Fastemps an employer of the injured worker and therefore covered within the requirement of § 342(a) [failure to report a serious injury]? ¶ 2) Did the Division correctly cite ESSG for violating § 342(a) and, if so, was the penalty imposed appropriate?" The Board took the joint petition under submission.

### **ISSUES**

1. The primary issue raised within the Petitioners' petition and through the Board's own motion, is whether both ESSG and Fastemps were employers of the injured worker, and thus subject to citation by the Division.
2. If either ESSG or Fastemps, or both, are found to be the employer of the injured employee, did the ALJ correctly determine that they each violated section 342(a) [failure to report a serious injury], and, if so, was the penalty imposed appropriate?

### **FINDINGS OF FACT**

1. Hill Phoenix was a secondary employer that utilized the services of temporary employees.
2. In approximately March 2011, Hill Phoenix entered into an agreement with Fastemps entitled "Agreement for Temporary Labor Services," wherein Fastemps agreed to supply its employees to Hill Phoenix to perform services for a price. (Exhibits 5 and A-15-4.) Fastemps agreed to "recruit, interview, select, hire and assign employees who, in

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<sup>2</sup> Neither Petitioners nor the Board sought reconsideration of the ALJ's decision with respect to the affirmance of the section 3203(a) citation and penalties. We observe that, if both ESSG and Fastemps are found to be employers, as will be discussed herein, the evidence supports a finding that neither entity complied with the requirements of section 3203(a), and that the penalty should be upheld.

Supplier's judgment, are best qualified to perform the services described...." Fastemps was also responsible for payment of the employees' wages, for payroll, for payment of taxes, and for provision of workers compensation insurance, etc.

3. In February 2012, Fastemps assigned its agreement with Hill Phoenix to ESSG via an "Assignment of Staffing Agreements." (A-15-1.) ESSG agreed to assume and perform all the obligations of Fastemps under the staffing agreement that existed between Hill Phoenix and Fastemps.
4. In February 2012, ESSG and Fastemps also entered into a separate agreement known as an "Employee Recruiting and Placement Outsource Agreement." (Exhibits 4 and A-11.) Under this agreement, the parties agreed that ESSG would be considered the employer of all temporary employees assigned to third parties (including the employees assigned to Hill Phoenix). ESSG had responsibility for paying payroll, payroll taxes, unemployment insurance, provision of workers compensation, and other administrative functions. However, the agreement provided that Fastemps would be responsible for recruiting, screening, interviewing, selecting, and placing the employees with third parties, such as Hill Phoenix, in order to fulfill job orders that Fastemps obtained from these third parties.
5. In March of 2012, under the aforementioned agreements, Fastemps placed Reginald Campbell (Campbell) at Hill Phoenix.
6. On March 27, 2012, Campbell suffered an injury while working at Hill Phoenix's worksite. The parties stipulated that the injury was serious and that the injury became serious<sup>3</sup> on March 29, 2012 at 8 p.m.
7. Hill Phoenix reported Campbell's serious injury to the Division. Hill Phoenix made the report on behalf of itself only; it did not make a report on behalf of any other entity.
8. Fastemps is a primary employer for Campbell since it held a right of control.
9. Fastemps failed to report Campbell's serious injury to the Division.
10. ESSG was not an employer of Campbell since the evidence does not sufficiently demonstrate that it held any right of control.

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<sup>3</sup> Section 330 subdivision (h) states:

"Serious injury or illness" means any injury or illness occurring in a place of employment or in connection with any employment which requires inpatient hospitalization for a period in excess of 24 hours for other than medical observation or in which an employee suffers a loss of any member of the body or suffers any serious degree of permanent disfigurement, but does not include any injury or illness or death caused by the commission of a Penal Code violation, except the violation of Section 385 of the Penal Code, or an accident on a public street or highway.

## DECISION AFTER RECONSIDERATION

The Board has independently reviewed and considered the entire record in this matter. In making this decision, the Board has taken no new evidence.

### **A. Were both ESSG and Fastemps employers of the injured worker?**

We first consider the issue of whether either ESSG or Fastemps, or both, are employers. An employer is defined as “[e]very person....which has any natural person in service.” (Labor Code sections 3300, 6304.)<sup>4</sup> In some instances, an employee may have more than one employer. Where an employer sends an employee to do work for another person, and both employers have the right to exercise certain powers of control over the employee, that employee may be held to have two employers—a “primary” employer (also referred to as a “general” employer) and a “secondary” employer (also referred to as a “special” employer). (*Sully-Miller Contracting Company v. CA Occupational Safety and Health Appeals Board* (2006) 138 Cal. App. 4th 684, 693-694<sup>5</sup>, *citing*, *Brassinga v. City of Mountain View*, (1998) 66 Cal. App. 4th 195, 209, 217-218.) The primary employer typically loans or leases one or a number of employees to a secondary employer; the secondary employer typically controls the day-to-day work of the loaned employee. (*Kelly Services*, Cal/OSHA App. 06-1024, Decision After Reconsideration (Jun. 15, 2011).)

In determining whether dual employment exists, the principal consideration is whether both the primary and the secondary employer have the right to control and direct the activities of the alleged employee.<sup>6</sup> (*See e.g., Sully-Miller Contracting Company v. CA Occupational Safety and Health Appeals Board* (2006) 138 Cal. App. 4th 684, 693-694; *Kowalski v. Shell Oil Co.*, (1979) 23 Cal. 3d 168, 174-175; *County of Los Angeles v. Workers' Comp. Appeals Bd.*, (1981) 30 Cal. 3d 391, 405; *National Auto. Ins. Co. v. Industrial Acci. Com.*, (1943) 23 Cal. 2d 215, 219; *Brassinga v. City of Mountain View*, (1998) 66 Cal. App. 4th 195, 209, 215-217.) “The right to control and direct the activities of the alleged employee or the manner and method in which the work is performed, whether exercised or not, gives rise to the employment relationship.” (*Industrial Indem. Exchange v. Industrial Acci. Com.*, (1945) 26

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<sup>4</sup> An employee is defined in Labor Code section as “every person who is required or directed by any employer to engage in any employment or to go to work or be at any time in any place of employment.”

<sup>5</sup> In *Sully-Miller Contracting Co. v. California Occupational Safety & Health Appeals Bd.*, (2006) 138 Cal. App. 4th 684, the Court of Appeal made clear that the Board may consider workers compensation authority pertaining to dual employment, noting that the “Legislature intended that the term ‘employer’ be given the same meaning under both worker’s compensation and worker safety law.” (*Id.* at 693.)

<sup>6</sup> Additional factors relevant to determining the existence of an employment relationship may include those discussed in *Brassinga v. City of Mountain View*, (1998) 66 Cal. App. 4th 195, 217, which discusses additional factors specific to finding the existence special employment relationship. (*See also, Sully-Miller Contracting Company v. CA Occupational Safety and Health Appeals Board* (2006) 138 Cal.App.4th 684, 693-694; *see also e.g., S. G. Borello & Sons, Inc. v. Department of Industrial Relations*, (1989) 48 Cal. 3d 341.) In this decision, we do not discount the importance of these other factors in appropriate circumstances.

Cal. 2d 130, 135 [citations omitted].) “The fact an employer does not exercise its right of control is not dispositive on the question of an employment relationship because it is the right to control and not the exercise of that right that is the test.” (*Sully-Miller Contracting Co. v. California Occupational Safety & Health Appeals Bd.*, (2006) 138 Cal. App. 4th 684, 693; see also *Brassinga v. City of Mountain View*, (1998) 66 Cal. App. 4th 195, 215-217; *National Auto. Ins. Co. v. Industrial Acci. Com.*, (1943) 23 Cal. 2d 215, 219.) In addition, it is settled that the right of control does not necessarily need to be complete for a general and special employment relationship to be found. (*Industrial Indem. Exchange v. Industrial Acci. Com.*, (1945) 26 Cal. 2d 130, 135.)

The recognition of dual employment based significantly on the right of control aids in the realization of the legislative purposes of the Occupational Safety and Health Act. It assures safe and healthful working conditions by “imposing responsibility for worker safety and health upon the entity that controls the work activity of the worker and, hence, is most responsible for exposing the worker to the hazardous work activity.” (*Optical Coating Laboratory Inc.*, Cal/OSHA App. 82-1093 Decision After Reconsideration (Sep. 28, 1984).)

“Where there is an actual question as to the status of an entity as an employer, the Board has reviewed the record for indices of control over the manner and means of work.” (*Gonzalo Olascoaga, dba Gonzalo Olascoaga*, Cal/OSHA App. 13-2097, Decision After Reconsideration (Nov. 24, 2015), citing *Treasure Island Media, Inc.*, Cal/OSHA App. 10-1095, Decision After Reconsideration (Aug. 13, 2015).) Whether the right to control existed or was exercised is generally a question of fact to be resolved from the reasonable inferences to be drawn from the circumstances shown. (See, *Brassinga v. City of Mountain View*, (1998) 66 Cal. App. 4th 195, 216.)

Applying the standards discussed above, we now determine that Fastemps was an employer with the right to control and direct the activities of the employee. However, we find the evidence insufficient to sustain a finding that ESSG was an employer with a right of control. In making this finding, we find the following facts to be of significance:

In March 2011, Fastemps entered into an agreement with Hill Phoenix. Fastemps agreed to supply Hill Phoenix with temporary workers. Fastemps agreed to “recruit, interview, select, hire and assign employees” that were best qualified to perform services for Hill Phoenix. (Exhibits 5 and A15-4.) Under the agreement, Fastemps was the employer of the temporary workers. Fastemps paid all wages, maintained personnel records, withheld all taxes, provided insurance, and engaged in other administrative functions.

In February of 2012, Fastemps assigned its contract with Hill Phoenix to ESSG. (Exhibit A15-1.) However, at approximately the same time, ESSG and Fastemps entered into a separate agreement, known as the “Employee Recruiting and Placement Outsource Agreement.” (Exhibit 4 and A11.) Under this agreement, ESSG was designated the employer of all temporary employees assigned to third parties (including the employees assigned to Hill Phoenix). ESSG also took over responsibility for functions such as paying payroll, payroll taxes, unemployment insurance, provision of workers compensation and other administrative functions. However, Fastemps retained the majority of the duties it had under its original agreement with Hill Phoenix. Fastemps retained responsibility for recruiting, screening, interviewing, selecting, and placing the employees with third parties, such as Hill Phoenix, in order to fulfill job orders that Fastemps obtained from these third parties. ESSG purported to outsource such duties to Fastemps.

Following the aforementioned agreements, the evidence demonstrates that ESSG had virtually no direct communication with Hill Phoenix, leaving all direct dealings to Fastemps. Omar Isordia (Isordia), the plant manager for Hill Phoenix, and Alma Hernandez (Hernandez), Human Resource Manager for Hill Phoenix, both testified that, while they had heard of ESSG and occasionally saw its name on documents, they had never had any specific dealings with anyone at ESSG. Fastemps was always their point of contact. When they needed temporary employees, they solely contacted, and dealt with, Fastemps, including with respect to the placement of Campbell. More specifically, they dealt with Diana Ehrman (Ehrman) and Timothy Hoylman (Hoylman), who were employees of Fastemps. Isordia and Hernandez both believed that Fastemps was the actual employer of the temporary employees, including Campbell. Hernandez additionally testified that Hill Phoenix reported information concerning the temporary employees directly to Fastemps, not to ESSG. They provided Fastemps employee time cards, they reported accidents, injuries, and absences to Fastemps, and they provided information regarding employee training to Fastemps. Hoylman also testified that Fastemps, not ESSG, actually conducted inspections of Hill Phoenix to ensure employee safety. Ultimately, this evidence demonstrates an absence of any meaningful direct communication between ESSG and Hill Phoenix as to Campbell, or any other employees, which supports a finding that the right to control rested with Fastemps, but not with ESSG.

The evidence also demonstrates that Fastemps, not ESSG, primarily engaged in communications with the temporary employees assigned to third parties. It recruited such employees, it interviewed them, it selected them, and it provided the employees some safety training in the form of videos. Further, the specific factual circumstances surrounding Campbell’s injury also demonstrate that Fastemps actually held a right of control over the employees. After Campbell was injured, Hill Phoenix reported the injury to Fastemps, not to ESSG. (Exhibit A-3.) Timothy Hoylman (Hoylman), the Vice President of

Fastemps, testified that the next day, following the accident, Campbell went to Fastemps' office in Rancho Cucamonga to personally report his injury and to request that they send him to a medical clinic. Fastemps then sent him to a medical clinic. And after learning that Campbell went to the hospital, Fastemps made repeated efforts to determine his status, and Fastemps, not ESSG, communicated with Hill Phoenix regarding the status of Campbell and regarding reporting requirements. Next, upon Campbell's release from the hospital, Hoylman testified that Campbell talked to Fastemps directly, expressed a desire to return to work, and they eventually sent him back to work. This evidence further supports a finding that Fastemps was the employer with the right to control.

Additionally, the evidence demonstrates that Fastemps had both the right to hire and discharge the employees placed at Hill Phoenix. The retention of the power to hire and discharge can be sufficient in some circumstances to impose liability upon the original or general employer. (*National Auto. Ins. Co. v. Industrial Acci. Com.*, (1943) 23 Cal. 2d 215, 219.)

Here, the testimony of the witnesses and the "Employee Recruiting and Placement Outsource Agreement" all suggest that Fastemps had primary control over hiring and placement of employees. The agreement provided that "[Fastemps] shall recruit, screen, interview and select employees (recruited employees) to perform the applicable work on job orders that [Fastemps] shall obtain from third parties." (Exhibits 4 and A-11.)

The evidence also supports a finding that Fastemps held the right to discharge employees. During her investigation, Cisneros interviewed Diana Ehrnman of Fastemps. With regard to termination, Ehrnman advised Cisneros that there was no such thing as firing, she said the employees would simply not be placed.<sup>7</sup> Since Fastemps determined which employees would be placed, we conclude that Fastemps' method of employment discontinuation is sufficiently similar to the right of discharge. All of this evidence, particularly when considered in aggregate, prevails in favor of a finding that Fastemps was a primary employer.

In contrast, the evidence is insufficient to support a finding that ESSG was an employer with the right of control. The evidence, particularly with regard to Campbell, demonstrates that ESSG primarily performed administrative functions such as processing payroll, processing payroll taxes, collection of taxes, paying unemployment insurance, securing workers compensation insurance, and other back-office functions. But, the mere performance of such administrative, recordkeeping, and insurance functions

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<sup>7</sup> Although this statement is hearsay it is admissible in this proceeding under section 376.2 to supplement and explain other evidence regarding Fastemp's relationship with the employees placed at third party employers. It is also admissible to supplement and explain the evidence as to the division of responsibilities between ESSG and Fastemps.

does not per se render ESSG an employer. (See e.g., *Furtell v. Payday California Inc.* (2010) 190 Cal. App. 4<sup>th</sup> 1419.)

While we do observe that ESSG's payment of the temporary employees' wages from its own account constitutes some evidence of an employment relationship, "the mere payment of wages or salary, *of itself*, is insufficient to establish that the recipient thereof is the servant of the one paying the same...." (*Brietigam v. Industrial Acci. Com.*, (1951) 37 Cal. 2d 849, 854 [citations omitted]; see also e.g., *Furtell v. Payday California Inc.* (2010) 190 Cal. App. 4<sup>th</sup> 1419.)

Here, notwithstanding the administrative duties held by ESSG and its payment of wages, we conclude that there is insufficient evidence that it had the right to control and direct the activities of Campbell, prevailing in favor of a finding that it was not an employer.

Likewise, the contractual language designating ESSG as the employer is not controlling. "[T]he label placed by the parties on their relationship is not dispositive, and subterfuges are not countenanced. [Citation omitted.]" (*S.G. Borello & Sons, Inc. v Department of Industrial Relations* (1989) 48 Cal. 3d 341, 349; see also, *Kowalski v. Shell Oil Co.*, (1979) 23 Cal. 3d 168, 176.) "The contract cannot affect the true relationship of the parties to it. Nor can it place an employee in a different position from that which he actually held." (*Kowalski v. Shell Oil Co.*, (1979) 23 Cal. 3d 168, 176; see also e.g., *Furtell v. Payday California Inc.* (2010) 190 Cal. App. 4<sup>th</sup> 1419.)<sup>8</sup> Here, the evidence as to the true relationship between the parties requires a finding that Fastemps was the actual employer with the right of control, and requires a finding that ESSG was primarily only providing some administrative services, without any actual right of control, which is insufficient, under these particular facts, for a finding that ESSG was an employer.

**B. Did the ALJ correctly determine that both Fastemps and ESSG violated section 342(a) [failure to report a serious injury]?**

Petitioners were cited under section 342(a) which reads as follows:

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<sup>8</sup> We do observe that ESSG contends that it is an Employer. The Joint Petition for Reconsideration states that, "everyone agrees that Hill Phoenix was the secondary employer and that ESSG was the primary employer...." (Joint Petition for Recon., pgs. 6-7.) However, an entity's status as an employer is a jurisdictional question and the parties cannot confer jurisdiction by agreement or stipulation where none exists. (See e.g., *Franklin v. Sacramento*, (1962) 204 Cal. App. 2d 450, 452—"Nor could the stipulation of the parties confer jurisdiction where none existed.")

Every employer shall report immediately by telephone or telegraph to the nearest District Office of the Division of Occupational Safety and Health any serious injury or illness, or death, of an employee occurring in a place of employment or in connection with any employment.

Immediately means as soon as practically possible but not longer than 8 hours after the employer knows or with diligent inquiry would have known of the death or serious injury or illness. If the employer can demonstrate that exigent circumstances exist, the time frame for the report may be made no longer than 24 hours after the incident.

Serious injury or illness is defined in section 330(h), Title 8, California Administrative Code.

Section 342(a) requires “every employer” to make a report of a serious illness or injury as soon as possible, and not later than 8 hours, after the employer knows or with diligent inquiry would have known of the death, serious injury or illness. (*See also*, Labor Code section 6409.1.) The Board has held that all employers, both primary and secondary, have an obligation to report a serious injury under section 342(a). (*See, Labor Ready, Inc.*, Cal/OSHA App. 99-3350, Decision After Reconsideration (May 11, 2001).)

Initially, we observe that the ALJ’s finding that ESSG violated this section must be vacated. An entities’ status as an employer is a jurisdictional question. (*Gonzalo Olascoaga, dba Gonzalo Olascoaga*, Cal/OSHA App. 13-2097, Decision After Reconsideration (Nov. 24, 2015).) Since we have concluded that ESSG was not an employer, the Board has no jurisdiction over it to enter an award and all citations against ESSG must be vacated.

However, we conclude that the evidence supports the ALJ’s determination that Fastemps, which we deem to be the primary employer, failed to report Campbell’s serious injury to the Division. The only entity that called the Division was Hill Phoenix, and Hill Phoenix did not report on behalf of any other entity. Isordia, who made the report on behalf of Hill Phoenix, unambiguously testified that he solely called the Division on behalf of Hill Phoenix, and that he did not make a report on behalf of any other entities.

Fastemps relies on *Helpmates Staffing*, Cal/OSHA App. 05-2239, Decision After Reconsideration (Jan. 20, 2011) to argue that the report of Hill Phoenix should be attributable to it. In that case, a secondary employer made a report as required by section 342(a). During its report, the secondary employer additionally provided the primary employer’s information to the Division, including providing the primary employer’s address. (*Ibid.*) The

Board concluded, based on inferences drawn from a “scant record,” that the secondary employer was authorized to make the report on behalf of the primary employer and therefore vacated the citation issued to the primary employer. (*Ibid.*)

Relying on *Helpmates Staffing*, Fastemps argues that they delegated to Hill Phoenix the responsibility to call the Division for all entities, both orally and via contract.<sup>9</sup> They argue that Hill Phoenix was authorized to make a report on behalf of all entities. They argue that Hill Phoenix’s report should be attributed to them. They also observe that the Division’s report form includes information that could be used to identify Fastemps, although it contains some typographical or transcription errors.

However, this matter is entirely distinguishable from *Helpmates Staffing*. In the present matter, Isordia credibly testified that he did not make the report on behalf of any other entities. He also testified that at the time he made the report he did not believe he was acting under any authorization or delegation. Isordia’s testimony demonstrates that Hill Phoenix’s report cannot be applied or ascribed to any other entity. Even assuming that Fastemps had delegated or assigned its reporting obligations to Hill Phoenix as it contends, it does not relieve Fastemps’ of liability under the circumstances of this case since their alleged delegate, by his own admission, never reported (and did not intend to report) on their behalf. Board precedent holds that if a delegate fails to make a report that failure is attributable to the delegating employer. (*Robert Onweller dba Pacific Hauling & Demolition*, Cal/OSHA App. 14-1087, Denial of Petition for Reconsideration (Jun. 15, 2015).)

## **DECISION**

When an employer fails to make a report, the Board will issue either \$5000 or a zero penalty. (*Allied Sales and Distribution, Inc.*, Cal/OSHA App. 11-0480, Decision After Reconsideration (Nov. 29, 2012).) Here, the Board exercises its authority to assess a \$5000 penalty against Fastemps.

For the reasons stated above, the decision of the ALJ is affirmed. The summary table should reflect the affirmance of a penalty in the sum of \$5,000.00 against Fastemps for the violation of section 342(a). It should additionally reflect the affirmance of a penalty in the sum of \$185.00 against Fastemps for the violation of section 3203(a).

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<sup>9</sup> Contrary to the Petitioners’ assertions, after reviewing the contracts, we observe that there does not appear to be any clear delegation of reporting obligations to Hill Phoenix. Specifically, Paragraph 3(b) of the Agreement for Temporary Labor Services between Hill Phoenix and Fastemps does not dictate that Hill Phoenix is required to fulfill Fastemps’ reporting obligations.

However, the summary table should reflect that all citations are vacated as against ESSG due to want of jurisdiction.

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

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
FILED ON: JAN 29, 2016

## SUMMARY TABLE

### DECISION AFTER RECONSIDERATION

In the Matter of the Appeal of:

**EMPLOYER SOLUTIONS STAFFING GROUP II, LLC**  
**Docket. 2012-R3D6-3207**

Abbreviation Key:	Reg=Regulatory
G=General	W=Willful
S=Serious	R=Repeat
Er=Employer	DOSH=Division

IMIS No. 316343912

DOCKET	CITATION	ITEM	SECTION	TYPE	ALLEGED VIOLATION DESCRIPTION MODIFICATION OR WITHDRAWAL AND REASON	APPEAL	VERIFIED	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY ASSESSED BY ALJ	FINAL PENALTY ASSESSED BY BOARD
12-R3D6-3207 (ESSG II, LLC)	1	1	342(a)	Reg	Vacated by the Board.		x	\$5,000	\$5,000	\$0
12-R3D6-3208 (ESSG II, LLC)	2	1	3203(a)	G	Vacated by the Board.		x	\$185	\$185	\$0
<b>Sub-Total</b>								\$5,185	\$5,185	\$0

**Total Amount Due\***

(INCLUDES APPEALED CITATIONS ONLY)

**\$0**

NOTE: Payment of final penalty amount should be made to:  
 Accounting Office (OSH)  
 Department of Industrial Relations  
 P.O. Box 420603  
 San Francisco, CA 94142

\*You will owe more than this amount if you did not appeal one or more citations or items containing penalties.  
 Please call (415) 703-4291 if you have any questions.

POS: 1/29/2016

## SUMMARY TABLE

### DECISION AFTER RECONSIDERATION

In the Matter of the Appeal of:

**FASTEMPS INC.**  
**Docket. 2012-R3D6-3208**

Abbreviation Key:	Reg=Regulatory
G=General	W=Willful
S=Serious	R=Repeat
Er=Employer	DOSH=Division

IMIS No. 316344993

DOCKET	CITATION	ITEM	SECTION	TYPE	ALLEGED VIOLATION DESCRIPTION MODIFICATION OR WITHDRAWAL AND REASON	AFFIRMED	VOID	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY ASSESSED BY ALJ	FINAL PENALTY ASSESSED BY BOARD
12-R3D6-3207 (Fastemps, Inc.)	1	1	342(a)	Reg	Citation is affirmed.	x		\$5,000	\$5,000	<b>\$5,000</b>
12-R3D6-3208 (Fastemps, Inc.)	2	1	3203(a)	G	Citation is affirmed.	x		\$185	\$185	<b>\$185</b>
<b>Sub-Total</b>								\$5,185	\$5,185	<b>\$5,185</b>

**Total Amount Due\***

(INCLUDES APPEALED CITATIONS ONLY)

**\$5,185**

NOTE: Payment of final penalty amount should be made to:  
 Accounting Office (OSH)  
 Department of Industrial Relations  
 P.O. Box 420603  
 San Francisco, CA 94142

\*You will owe more than this amount if you did not appeal one or more citations or items containing penalties.  
 Please call (415) 703-4291 if you have any questions.

POS: 1/29/2016