

BEFORE THE  
STATE OF CALIFORNIA  
OCCUPATIONAL SAFETY AND HEALTH  
APPEALS BOARD

In the Matter of the Appeal of:

**GEO PLASTICS**

2200 East 52<sup>nd</sup> Street  
Los Angeles, CA 90058,

Employer.

DOCKET 13-R6D2-0810

**DECISION**

**Background and Jurisdictional Information**

At all relevant times, Geo Plastics (Employer) was engaged in the manufacture of molded plastic products and employed workers in the state of California. On December 14, 2012, the Division of Occupational Safety and Health (Division) opened an investigation at Employer's place of business, 2200 East 52<sup>nd</sup> Street, Los Angeles, California, 90058. On February 21, 2013, the Division cited Employer for the following alleged violation of the California Code of Regulations<sup>1</sup>.

<b><u>Cit/Item</u></b>	<b><u>Alleged Violation</u></b>	<b><u>Type</u></b>	<b><u>Penalty</u></b>
1-1	342(a) [Employer did not report a serious, work-related injury to the Division]	Regulatory	\$ 5,000

Employer filed a timely appeal, contesting the reasonableness of the penalty. Employer also alleged the affirmative defense of "absence of employer knowledge of serious violation."

At the pre-hearing conference held in this matter on September 9, 2013, the ALJ informed Employer's representative (Michael Morris) that due to recently issued Decisions After Reconsideration, the ALJs at the Cal/OSHA Appeals Board are precluded from reducing the regulatory \$5,000 penalty for a violation of section 342(a) absent extenuating circumstances (which did not appear to be present in this matter--Employer's position being that he did not

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

know he was required to report the injury to the Division and that he had reported the injury to his Workers' Compensation insurance carrier). Mr. Morris indicated that he wished to have a hearing on the issue so that he could appeal any Decision assessing the \$5,000 regulatory penalty. Therefore, at the request of the parties, a telephonic hearing was set for December 19, 2013. The telephonic hearing was convened at 9:00 a.m. on December 19, 2013 in West Covina, California. Administrative Law Judge (ALJ) Sandra L. Hitt, presided. Michael Morris, President, represented Employer. Michael Loupe, District Manager, High Hazard District, represented the Division. Because the recording equipment was malfunctioning, the parties agreed to submit the matter for Decision on stipulations of fact.

### **Summary of Evidence**

The parties stipulated to the following facts:

1. On or about March 11, 2012, one of Employer's employees suffered a serious, work-related injury.
2. The injury was a partial amputation of the employee's finger.
3. Prior to the Division's investigation, Employer did not report the above-mentioned serious injury to the Division.
4. Employer did report the serious injury to Employer's Workers' Compensation insurance carrier.
5. The reason Employer did not report the serious injury to the Division was that Employer did not know he was required to report this injury to the Division.<sup>2</sup>

### **Findings and Reasons for Decision**

#### **Docket 13-R6D2-0810**

Citation 1, Item 1, Regulatory § 342(a)

**The Division established a regulatory violation of § 342(a).**

**Employer did not establish the affirmative defense of "lack of employer knowledge".**

**The \$5,000 regulatory penalty is reasonable.**

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<sup>2</sup> At the pre-hearing, Employer stated that its previous and current Workers' Compensation insurance carriers were also unaware of the requirement to report such an injury to the Division. This statement is also contained on the appeal form which Employer filed.

Section 342(a) requires an employer to report a serious, work-related injury to the nearest Division district office within 8 hours of the employer's learning of the serious injury, with an exception for "exigent circumstances" if the injury is reported within 24 hours. (Title 8, California Code of Regulations, section 342(a).) Here, the injury was not reported within 24 hours. Rather, some nine months later, when the Division opened its investigation, Employer still had not reported the injury. The failure of an employer to report a serious, work-related injury was recently addressed by the Appeals Board in *SCCD--Continuing Education NC Center*, CAL/OSHA App. 11-1196, Decision After Reconsideration (December 4, 2012). There the Appeals Board held that \$5,000 is the proper penalty to be assessed in all cases of non-reporting unless such assessment would result in a miscarriage of justice (in which case the proper penalty would be \$0).

In *Allied Sales and Distribution*, Cal/OSHA App. 11-0480, Decision After Reconsideration (November 29, 2012), the Board considered a situation in which an employer failed to report because the employer relied on assurances from the Fire Chief that no further report was required.<sup>3</sup> There the Board held that imposing a \$5,000 penalty did not result in a miscarriage of justice. Here, Employer had no argument for justifiable reliance; rather, Employer argued that he did not know he was supposed to report the injury to the Division and neither did his insurance carriers.

The affirmative defense of lack of knowledge does not apply to this situation. Employer knew that he had not reported the injury to the Division, (the violation), he simply did not know that the law required him to do so. This requirement has been in place since at least 1992.<sup>4</sup> The Appeals Board has long held that ignorance of safety orders is no excuse. (*Nick's Lighthouse*, Cal/OSHA App. 05-3086, Denial of Petition for Reconsideration (June 8, 2007); *S. Kumar & Co., Inc.*, Cal/OSHA App. 93-622, Decision After Reconsideration (Nov. 13, 1996).) All California employers have a duty to stay current with safety standards, orders and regulations affecting their operations. (*McKee Electric Company*, Cal/OSHA App. 81-0001, Denial of Petition for Reconsideration (May 29, 1981).)

The Division classified the violation as regulatory. A regulatory violation is defined by section 334(a) as follows:

Regulatory violation--is a violation, other than one defined as Serious or General that pertains to permit posting, recordkeeping, and reporting requirements as established by regulation or statute. For example, failure to obtain permit; failure to post citation,

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<sup>3</sup> Because the fire department reported the injury to the Division.

<sup>4</sup> The statute (Labor Code section 6409.1 (b)) was amended in 2002 to increase the penalty to \$5,000.

poster; failure to keep required records; *failure to report industrial accidents, etc.*” (Emphasis added.)

Failure to report an injury falls squarely within the definition of a regulatory violation. Therefore, the violation was properly classified as regulatory.

The Division enjoys a rebuttable presumption that its penalties are reasonable once the Division establishes that it computed the penalties in adherence with the applicable regulations. *Stockton Tri Industries, Inc.* Cal/OSHA App. 02-4946, Decision After Reconsideration (Mar. 27, 2006). Labor Code section 6409.1(b) provides, in pertinent part, “An employer who violates this subdivision [reporting requirement] may be assessed a civil penalty of not less than five thousand dollars.” The Division assessed a \$5,000 penalty for Citation 1, Item 1 in adherence with Labor Code section 6409.1 (b). Employer offered insufficient evidence to rebut the presumption that the proposed penalty for Citation 1, Item 1, is reasonable. Therefore, the penalty for Citation 1, Item 1, is assessed at \$5,000

### **Decision**

It is hereby ordered that the citation is established, modified, or dismissed as set forth above and in the attached Summary Table.

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**SANDRA L. HITT**  
Administrative Law Judge

Dated: January 21, 2014  
SLH:ml

## SUMMARY TABLE DECISION

In the Matter of the Appeal of:

**GEO PLASTICS**  
**Dockets 13-R6D2-0810**

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

IMIS No. 314761198

DOCKET	C I T A T I O N	I T E M	SECTION	T Y P E	ALLEGED VIOLATION DESCRIPTION MODIFICATION OR WITHDRAWAL	A F F I R M E D	V A C A T E D	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY PROPOSED BY DOSH AT PRE- HEARING	<b>FINAL PENALTY ASSESSED BY BOARD</b>
13-R6D2-0810	1	1	342(a)	Reg	[Failure to report serious, work-related injury to the Division] ALJ upheld the citation and the penalty.	X		\$5,000	\$5,000	<b>\$5,000</b>
<b>Sub-Total</b>								\$5,000	\$5,000	<b>\$5,000</b>

**Total Amount Due\***

**\$5,000**

(INCLUDES APPEALED CITATIONS ONLY)

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.

ALJ: SLH/ml  
 POS: 1/21/2014