

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

In the Matter of the Appeal of:

JESUS OLIVIA CCASA
5777 Main Street
South Gate, CA 90280-7837

Employer

DOCKETS 13-R4D4-2561

DECISION

Statement of the Case

JESUS OLIVIA CCASA (Employer) owns and manages an apartment building located in Ontario, California. Beginning on February 22, 2013, the Division of Occupational Safety and Health (Division) through Carmen Cisneros, Compliance Officer, conducted an investigation at a place of employment maintained by Employer at 1259 W. Rosewood Court, Unit B, in Ontario, California. On August 5, 2013, the Division cited Employer for the following violations¹: Citation 1, Item 1, for failure to report a serious injury that occurred to one of Employer's employees; and Citation 1, Item 2, for failure to implement and maintain a written Injury and Illness Prevention Program.

Employer filed a timely appeal contesting the reasonableness of all proposed penalties and a plea for financial hardship.

The matter was heard on August 5, 2014 at West Covina, California, before Clara Hill-Williams, Administrative Law Judge (ALJ) for California Occupational Safety and Health Appeals Board. Enzo Ccasa, the Owner's son represented Employer. District Manager, Laura Drew represented the Division. The Employer submitted documents in support of its plea of financial hardship. The matter was submitted on August 5, 2014 and extended by Order of the undersigned ALJ to March 31, 2015.

Stipulations and Pre-Hearing Determinations

At the May 5, 2014 Prehearing Conference, ALJ Hill-Williams issued a Prehearing Order wherein: Employer withdrew its appeal to Citation 1, Items 1 and 2 and the Division reduced the proposed penalties from \$5,085 to \$5,050. Employer reserved a plea of financial hardship regarding the reduced penalty of \$5,050 to be

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

heard at the hearing herein. The parties reached a partial stipulated settlement based upon additional evidence presented by the Employer.

1. No changes were proposed to Citation 1, Item 1.
2. The Division gave maximum good faith credit reducing the penalty from \$85 to \$50 for Citation 1, Item 2.
3. The parties stipulated that the terms and conditions set forth in the above-described agreement, are not intended to be and shall not be construed by anyone or any proceeding as an admission of negligence, fault, or wrongdoing whatsoever by Employer.

The parties further stipulated that neither Employer's agreement to compromise this matter nor any statement contained in this agreement shall be admissible in any other proceeding, either legal, equitable, or administrative, except for purposes of administration and enforcement of the California Occupational Safety and Health Act and in proceedings before the Appeals Board.

The parties further stipulated that Employer entered into this agreement in order to avoid protracted litigation and costs associated thereto.

The parties further stipulated that no findings or conclusions have been made by any trier-of-fact regarding the citations and fines at issue herein.

4. The employer agreed to withdraw its appeal of all citations in their entirety, with the exception of a request for penalty reduction based on financial hardship for ALJ Hill-Williams' determination.

Issues

1. Has Employer established financial hardship?
2. If Employer has established financial hardship, by what amount should the penalty be reduced?

Findings of Fact

1. The individual adjusted gross income of Employer's owner, Jesus Olivia Ccasa (Olivia), pursuant to 1040 U.S. Individual Tax Form for 2013 was negative - \$1,974 (See Exhibit A).
2. The individual adjusted gross income of Employer's owner, Olivia, pursuant to 1040 U.S. Tax Form for 2012 was negative -\$6,975 (See Exhibit B).

3. The individual adjusted gross income of Employer's owner, Olivia, pursuant to 1040 U.S. Tax Form for 2011 was negative -\$2,301 (See Exhibit C).
4. Employer's Profit and Loss/income and expense statement from 8/1/12 to 7/31/13 (See Exhibits D and E)² reflect income Olivia received, which includes rental income of approximately \$3,700 per month³ totaling \$37,289.41, and her monthly social security income of \$294 per month totaling \$3,143 for the year; occasional small amounts transferred from Olivia's son, Enzo Ccasa's (Enzo) personal bank account to Olivia's business account, totaling \$2,150; and a \$6,565.65⁴ loan from Enzo for a bathroom remodel. The total gross adjusted income for 2013 was \$50,848.06

Olivia's expenses included rental insurance, rental improvement expenses, repairs, rental utilities and the apartment mortgage. The total Expenses for 2013 totaled \$52,033.69; with a loss of negative - \$1,185.63.

5. Olivia's Profit and Loss/income and expense statement from 8/1/13 to 7/31/14 Exhibit E – reflects a rental increase by \$100 for each unit; which increased the projected income from the apartment units to \$4,100 per month. Olivia received money from Enzo, which totaled \$1,539.77 to supplement the shortfall collected from the apartment tenants, resulting in an "overall total" of \$48,282.51.

The expenses for 2013 through 2014 were \$46,755.05 resulting in a slight profit of \$1,527.46.

6. Employer paid \$10,584 to Carlos Cuellar (Cuellar), the injured employee, for remodeling four bathroom units from July 15, 2012 through January 5, 2013 (See Exhibit H).
7. Employer paid \$1,708.46 for the cost of materials to complete work not completed by Cuellar as a result of his injury at the worksite (See Exhibit I)
8. The City of Ontario issued a Notice of Correction (8/9/13), Notice and Order to Repair (10/17/13) to Employer, for city violations as a result of the City of Ontario's inspection of the apartment building on June 11, 2013 (See Exhibit L).

² Enzo testified that Exhibits D and E are derived from the joint Chase bank account with Olivia and his personal Chase Bank account through a "Quicken" software program.

³ Enzo usually made up the amount due from his personal Chase bank account #4165 into the joint business Chase account #5821; because there were not any reserves in the joint Chase account (See Exhibits D,E, F and G)

⁴ \$6,565.65 transferred from Enzo Ccasa's account to pay for bathroom remodels in the apartment building owned by his mother.

9. Employer received a Notice of Compliance from the City of Ontario on 7/24/14 (See Exhibit M).
10. Enzo paid \$1,293.60 in expenditures for materials from his personal account to comply with the City of Ontario Inspection (See Exhibit P).
11. The current mortgage for the apartment units is with Wells Fargo Bank with monthly payment options of \$2,570 without interest or \$2,973 with interest (See Exhibit W).
12. Utilities paid by Employer for all of the tenants includes gas, from \$100 to \$120; Electricity for outside lights averaging \$40 to \$50 per month; and water and refuse averaging \$350 per month (See Exhibit 1).

Analysis⁵

Employer failed to provide evidence sufficient to warrant a reduction in penalties based on a claim of financial hardship. Employer provided sufficient evidence to warrant a payment plan.

Employer may rebut the presumption that the Division's proposed penalties are reasonable if an employer raises financial hardship as a basis for challenging penalties and supports its plea with proof.

The Board reaffirmed that the penalties proposed by the Division are presumptively reasonable (*Stockton Tri Industries, Inc.*, Cal/OSHA App. 02-4946, Decision After Reconsideration (Mar. 27, 2006), p. 12), but the presumption may be rebutted where an employer raises financial hardship as a basis for challenging penalties and supports its plea with proof. The employer has the burden of proof on all issues pertaining to its financial condition (See *Paige Cleaners*, Cal/OSHA App. 96-1145, Decision After Reconsideration (Oct. 15, 1997)), and must present sufficient, credible evidence to establish financial hardship. Employer bears the burden of proof by a preponderance of evidence (Evidence Code section 115) on all issues pertaining to financial hardship.

Abatement of all violations is a pre-requisite to the Board granting financial hardship relief. See, e.g., *Specific Plating Co., Inc.*, Cal/OSHA App. 95-1607 through 1629, DAR (Oct. 15, 1997). Here, abatement of the conditions upon which the citations were issued has been completed, resulting in the stipulated settlement of the Division and Employer (See Stipulations and Pre-Hearing Determinations, *supra*).

In *Stockton Tri Industries, Inc.* (*supra*), the Board set new guidelines for evaluating an employer's financial hardship claim "on the merits of each case as presented" and reasserted its discretionary authority pursuant to Labor Code section 6602 to fashion appropriate relief as follows:

⁵ Exhibits received are listed in Appendix A. Certification of the Record is signed by the ALJ.

[T]he Board can reduce or eliminate a proposed penalty due to proven financial distress. (*Veterans in Community Service*, Cal/OSHA App. 96-624, Denial of Petition for Reconsideration (Sep. 24, 1997); *Paige Cleaners*, Cal/OSHA App. 95-1607, Decision After Reconsideration (Oct. 15, 1997).)

That an employer's financial hardship is not attributable solely to safety expenditures does not operate to automatically rule out granting penalty relief. Historically, the Board's focus was on what penalty amount, based on the circumstances of a particular case, serves the purposes of the Act. In some cases, an employer's distressed financial condition may warrant assessing a lower penalty amount to induce safety efforts and future compliance than would be the case if the same employer were not under such hardship. Such economic factors should not therefore be disregarded as irrelevant to the issue of "reasonableness of the proposed penalty."

For the purposes of penalty reduction, financial hardship is shown in situations where an employer's income is inadequate to sustain its business operations, i.e., to pay its ongoing expenses and remaining debts such as payroll, taxes, insurance, rent and supplies.

In asserting a plea of financial hardship, Enzo Ccasa (Enzo), Employer's property manager and son of Employer's owner, Jesus Olivia Ccasa (Olivia) testified that he has managed the apartment unit owned by Olivia for approximately four years. Olivia was cited as an employer based upon the serious injury Carlos Cuellar (Cuellar) sustained. Cuellar was hired to remodel the bathrooms of the apartment owned by Olivia. As a result of Cuellar's serious injury, Olivia was cited by the Division on August 5, 2013. Employer incurred significant expenses to complete the bathroom remodeling started by Cuellar. In addition to the Division's citations, Employer was also cited by the City of Ontario on or about August 9, 2013 to correct Employer's apartment's city code violations. Enzo used his personal income to help his mother finish the bathroom remodels started by Cuellar and to correct the city code violations. At the hearing Enzo submitted detailed exhibits demonstrating a negative profit loss of \$1,185.63 for 8/1/12 to 7/31/13 and a slight profit margin of \$1,527.46 for 8/1/13 to 7/31/14. At the Hearing Enzo testified and through documentary evidence showed that he gave a personal loan of \$6,565.65 to Employer for the bathroom remodel and \$1,539.77, which most likely accounted for the slight profit of \$1,527.46 in Employer's 2014 income and expense statement (See Exhibits D and E).

In following the Board's holding in *Paige Cleaners*, *supra*, Employer has the burden of proof on all issues pertaining to its financial condition, and must present sufficient, credible evidence to establish financial hardship. Employer bears the

burden of proof by a preponderance of evidence⁶ on all issues pertaining to financial hardship.

The mandate of the California Occupational Safety and Health Act of 1973 (the Act) is to assure safe and healthful working conditions for all California workers. (*Delta Transportation, Inc.*, Cal/OSHA App. 08-R2D1-4999, Decision After Reconsideration (Aug. 15, 2012), see also, *Stockton Tri Industries, Inc.*, Cal/OSHA App. 02-4946, Decision After Reconsideration (Mar. 27, 2006).) In order to promote the purposes of the Act, “the Division, like other public agencies, including its federal counterpart, justifiably relies on the deterrent effect of monetary penalties as a means to compel compliance with safety standards.” (*Delta Transportation, Inc.*, *supra.*) Because of the large number of workplaces which OSHA must regulate, relying solely on workplace inspections is an impractical means of enforcement. “[T]he threat of civil penalties serves as ‘pocket-book deterrence’ against violations of occupational safety and health standards.” (*Miller/Thompson J.D. Steel, Harris Rebar, a Joint Venture*, Cal/OSHA App. 99-3121, Decision After Reconsideration (Sep. 26, 2001), citing, *Atlas Roofing Co., Inc. v. OSHRC* (5th Cir. 1975) 518 F.2d 990, 1001.)

The Employer here has not made any showing that a reduction in civil penalties would further the purpose of the Act. Here, Enzo’s submission of his mother’s limited income generated from owning and operating the apartment and social security income have little to do with worker safety. A reduction in penalties under such circumstances does nothing to protect employees or to make the workplaces safe.

The grant of financial hardship relief in the present circumstances, given the lack of any showing that it would benefit worker safety, would diminish the deterrent effect of civil penalties. Therefore, the civil penalties are affirmed in their reduced amount reached by the parties’ stipulation, *supra.* However, given Employer’s current personal financial circumstances, the Administrative Law Judge asserts discretionary authority pursuant to Labor Code §6602 to fashion relief by allowing payment of the total penalties over 24 months.

The total assessed penalties of \$5,050 may be paid in 24 monthly installments, with the first installment of \$220 due on July 1, 2015 and \$210 due on the first of each subsequent month. Failure to pay by the fifteenth of each month will immediately cause the entire remaining balance to be due in full. Notwithstanding the foregoing, Employer may make a payment arrangement approved by the Department of Industrial Relations Accounting Office. Employer waives the statute of limitations for commencement of the collection of any civil penalty pursuant to Labor Code section 6651(a).

⁶ Evidence Code § 115 – “Burden of proof” means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court. The burden of proof may require a party to raise a reasonable doubt concerning the existence or nonexistence of a fact or that he establish the existence or nonexistence of a fact by a preponderance of the evidence, by clear and convincing proof, or by proof beyond a reasonable doubt. Except as otherwise provided by law, the burden of proof is by the preponderance of the evidence.

Conclusion:

Therefore, the Employer's plea of financial hardship is denied. Citation 1, Item 1, is assessed as proposed and Citation 1, Item 2 is affirmed as indicated in the Stipulation of the parties *supra*.

Decision

It is hereby ordered that the citations are established as indicated above and set forth in the attached Summary Table.

It is further ordered that the penalty indicated above and set forth in the attached Summary Table be assessed.

IT IS SO ORDERED.

Dated: May 1, 2015

CLARA HILL-WILLIAMS
Administrative Law Judge

CHW: ao

SUMMARY TABLE DECISION

In the Matter of the Appeal of:

**JESUS OLIVIA CCASA
DOCKETS 13-R4D4-2561**

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

IMIS No. 316346691

DOCKET	C I T A T I O N	I T E M	SECTION	T Y P E	MODIFICATION OR WITHDRAWAL AND REASON	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 HEARING	FINAL PENALTY ASSESSED BY BOARD
13-R4D4-2561	1	1	342(a)	Reg	ALJ does not find evidence of financial hardship	X		\$5,000	\$5,000	\$5,000
		2	1509(a)	G	DOSH applied maximum GF	X		\$85	\$50	\$50
Sub-Total								\$5,085	\$5,050	\$5,050
Total Amount Due*										\$5,050

(INCLUDES APPEALED CITATIONS ONLY)

NOTE: Please do not send payments to the Appeals Board. **All penalty payments must be made to:**

Accounting Office (OSH)
Department of Industrial Relations
PO Box 420603
San Francisco, CA 94142
(415) 703-4291, (415) 703-4308 (payment plans)

*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.
****The total assessed penalties of \$5,050 may be paid in 24 monthly installments, with the first installment of \$220 due on July 1, 2015 and \$210 due on the first of each subsequent month. Failure to pay by the fifteenth of each month will immediately cause the entire remaining balance to be due in full. Notwithstanding the foregoing, Employer may make a payment arrangement approved by the Department of Industrial Relations Accounting Office. Employer waives the statute of limitations for commencement of the collection of any civil penalty pursuant to Labor Code section 6651(a).**

**ALJ:CHW
POS: 05/01/2015**

APPENDIX A

SUMMARY OF EVIDENTIARY RECORD

**JESUS OLIVIA CCASA
Docket 13-R4D4-2561**

Date of Hearing: August 5, 2014

Division's Exhibits

Exhibit Number	Exhibit Description	Admitted
1	Jurisdictional documents	X

Employer's Exhibits

Exhibit Letter	Exhibit Description	Admitted
A	Form 1040 2013	X
B	Form 1040 2012	X
C	Form 1040 2011	X
D	Profits Loss Statements 8/1/12 – 7/13/13	X
E	Graph – Income/Expense	X
F	Chase Joint Acct.	X
G	Chase Enzo Bk Acct	X
H	Pymts made to Carlos Cuellar	X
I	Summary sheets & Home receipts	X
J	City of Ontario “Notice of Correction”	X
K	Notice of Need to Inspect	X
L	Notice & Order to repair	X
M	Notice of Compliance	X
N	Invoices – Rental Inspection	X
O	City of Ontario – Fire Dept.	X
P	Receipts to bring Units to Compliance	X
Q	Copies of credit cards used for payments	X
R	Rental agreement of 8/5/13 W/Increased rent	X
S	60 Day Notice	X
T	3 Day Notices	X
U	Rental Agreement, co-signed	X
V	Rental receipts	X
W	Notice of Mortgage 8/15/14 due date	X
X	Insurance	X
Y	Utilities/Rental	X
Z	Current personal Acct. balance for Olivia Ccasa	X

Witnesses Testifying at Hearing

1. Enzo Ccasa
2. Jesus Olivia Ccasa

CERTIFICATION OF RECORDING

I, Clara Hill-Williams, the California Occupational Safety and Health Appeals Board Administrative Law Judge duly assigned to hear the above matter, hereby certify the proceedings therein were electronically recorded. The recording was monitored by the undersigned and constitutes the official record of said proceedings. To the best of my knowledge, the electronic recording equipment was functioning normally.

Signature

Date

