

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

In the Matter of the Appeal of:

JOHN ROZA CONSTRUCTION, INC.  
7751 Stanton Avenue  
Buena Park, CA 90620

Employer

Docket No. 01-R3D5-1938

**DENIAL OF PETITION  
FOR RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code hereby denies the petition for reconsideration filed in the above entitled matter by John Roza Construction, Inc. (Employer).

**JURISDICTION**

From March 13 through April 25, 2001, a representative of the Division of Occupational Safety and Health (the Division) conducted an accident investigation at a place of employment maintained by Employer at 2172 E. Willow, Signal Hill, California (the site).

On May 1, 2001, the Division issued to Employer a citation alleging a serious violation of section 4307.1(b) [point of operation not properly guarded] of the occupational safety and health standards and orders found in Title 8, California Code of Regulations.<sup>1</sup>

Employer filed a timely appeal contesting the existence and classification of the alleged violation, and the reasonableness of the proposed penalty.

A hearing was held before Ashaki Hesson, Administrative Law Judge (ALJ) of the Board in Torrance, California. Johnny G. Roza, Owner, represented Employer. Alan Coie, Stall Counsel, represented the Division. On March 26, 2003, the ALJ issued a decision denying Employer's appeal. Employer filed a timely petition for reconsideration on April 23, 2003.

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

## **EVIDENCE**

On February 9, 2001, an employee of Employer sustained an injury to his left wrist while using a 12-inch miter saw. After investigating the accident Employer was cited by the Division for a serious violation of section 4307.1(b).

Employer's position was that he was not in violation of section 4307.1(b) because the saw was guarded, and the accident was the result of the employee's independent conduct.

## **REASONS FOR DENIAL OF PETITION FOR RECONSIDERATION**

Employer petitions for reconsideration alleging, in essence, that the evidence does not justify the findings of fact by the ALJ.

Specifically, Employer contends that:

1. The miter saw was operating as it should;
2. His employee followed the guidelines set forth in the operating manual;
3. The miter saw was stable on the ceramic floor;
4. The employee was familiar with how to use a miter saw;
5. He has a well devised safety plan;
6. Roza did not have his permission to move the safety guard; and
7. If the Board finds him liable he requests a reduction in the fine "considering that I am only a small business owner who is struggling to stay in business."

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.

Labor Code section 6616 provides that:

The petition for reconsideration shall set forth specifically and in full detail the grounds upon which the petitioner considers the final order or decision made and filed by the appeals board or a hearing officer to be unjust or unlawful, and every issue to be considered by the appeals board.

These requirements are mandatory. *Louis G. Beary Plastering*, Cal/OSHA App. 76-1296, Denial of Petition for Reconsideration (Nov. 14, 1977). Employer's petition plainly failed to meet these statutory requirements. The Board has consistently rejected petitions that do not contain sufficient detail. (See. e.g., *Lusardi Construction Company*, Cal/OSHA App. 86-318, Denial of Petition for Reconsideration (Oct. 29, 1986); *Paterson Pacific Parchment Co.*, Cal/OSHA App. 80-1238, Denial of Petition for Reconsideration (Apr. 22, 1981).) The Board stated the policy underlying this specificity rule in *Lusardi Construction Company*, *supra*, at p. 2:

Without specific and detailed allegations in the petition, there is nothing of substance for the Appeals Board to review and weigh against the judge's findings and decision to determine whether or not to grant Employer's petition for reconsideration.

Employer's allegations lack the substance that the Board requires in order to grant relief. The petition contains numerous statements expressing general disagreement with the ALJ's findings. A petition for reconsideration, however, requires more than asserting such disagreement. No relief can exist without specific references to evidence supporting Employer's position *from the record* and establishing a basis for reversing the ALJ's decision based upon principles of law.

In this case, Employer attempts to explain portions of evidence by asserting additional facts which have no specific references to evidence from the record. Employer, however has made no showing that the new facts could not, with reasonable diligence, have been discovered and produced at the hearing, and therefore are "new evidence" within the meaning of Labor Code section 6617(d).

Additionally, the findings of the ALJ are entitled to deference unless they are opposed by evidence of considerable weight (*Lamb v. Workmen's Compensation Appeals Board*, (1974) 11 C3d 274, 280). We find that Employer has not specified evidence from the record of considerable weight to justify reversing the ALJ's findings identified in the petition.

In addition Employer offers some conclusions that, if found to be true, could arguably set forth an Independent Employee Action Defense. However, we agree with the conclusion of the ALJ that the employee was using the saw for the first time; that the employee was allowed to lift the lower blade guard; and we find that by allowing the employee to work with this saw with his sweater on, by allowing the employee to place his hands near the cutting area and by Employer supporting the piece being cut, that Employer did not have or enforce an effective safety program.

Employer further requests penalty relief because he is a small business owner struggling to stay in business. We agree with the ALJ that the assessed penalty is consistent with the regulations and reasonable under the circumstances of this case. The evidence offered by Employer to justify a reduction does not comport with the minimum foundational standards previously enunciated by the Board.

### **DECISION**

Employer's petition is denied. The Board affirms the ALJ's decision finding a serious violation of section 4307.1(b) and assessing a civil penalty of \$10,800.

MARCY V. SAUNDERS, Member  
GERALD PAYTON O'HARA, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
FILED ON: June 12, 2003