

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

In the Matter of the Appeal of:

TEICHERT AGGREGATES  
P.O. Box 280  
Cool, CA 95614

Employer

Docket No. 04-R5D1-2982

**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 after reviewing the entire record, hereby affirms the decision of the ALJ.

**JURISDICTION**

Teichert Aggregates, (Employer) operated a place of employment at 2601 Highway 49, Cool, California. On July 14, 2004, the Division of Occupational Safety and Health (Division) conducted an investigation, and thereafter issued a citation for an alleged violation of Title 8 Cal. Code Regulations section 3999(c) [insufficient headroom for passage under conveyor].<sup>1</sup> Employer timely appealed on all regulatory grounds, and asserted twelve affirmative defenses. Later, Employer amended its appeal to only contest the applicability of the cited safety order, and the validity of the citation issued in its fictitious business name rather than its corporate name.

An Administrative Law Judge (ALJ) for the Board issued a Decision, dated February 5, 2007, denying Employer's appeal from a general violation of section 3999(c), and finding that the citation to Employer in its fictitious business name was valid.

On March 2, 2007, the Board ordered reconsideration of the Decision on its own motion. The issues to be considered were 1) whether the Division cited the proper entity, and 2) which Safety Order should apply when more than one Safety Order addresses an issue. The parties thereafter filed Answers addressing these issues.

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<sup>1</sup> All citations are to Title 8, California Code of Regulations, unless otherwise indicated.

## BACKGROUND

Employer performed quarry operations at the inspected site. The Division cited Employer, using its fictitious business name, for failure to provide adequate clearance for pedestrians walking under a conveyor (§3999(c).) Section 3999(c) is located in the General Industry Safety Orders (GISOs). The quarry is also governed by the Mining Industry Safety Orders (MISOs). The MISO covering conveyors is silent regarding any clearance for pedestrians permitted to walk underneath conveyors. (§7030.)

## FINDINGS AND REASONS FOR DECISION

After its March 2, 2007, Order of Reconsideration, the Board issued two Decisions After Reconsideration that address the legal issues identified for this case. Regarding the propriety of issuing a citation in the fictitious business name of an employer, *Western Door, Inc*, Cal/OSHA App. 01-2827, Decision After Reconsideration (Jun. 9, 2008), resolves the matter consistent with the authority and reasoning of the ALJ Decision herein. Also, *Los Angeles City Fire Department*, Cal/OSHA App. 03-3960, Decision After Reconsideration (Jul. 26, 2010), addressed the other legal question raised in the Board's Order of Reconsideration, and resolves it consistently with the reasoning and authority cited by the ALJ in the decision below. Specifically, *Los Angeles City Fire Department, supra*, confirms that a conflict must exist between the cited GISO and an industry specific Safety Order in order to avoid the applicability of the GISO. This rule is the same rule actually applied by the ALJ in the decision below, and is consistent with the authority cited therein.

The Appeals Board has considered the decision of the ALJ and the record in light of the subsequently issued Decisions After Reconsideration and affirms the ALJ's summary of evidence, rulings, findings, and conclusions and **adopts** the **decision** in its entirety. Accordingly, the ALJ's decision is attached and incorporated herein by reference.

## DECISION AFTER RECONSIDERATION

The decision of the ALJ dated February 5, 2007, denying Employer's appeals and imposing a civil penalty, is reinstated and affirmed.

CANDICE A. TRAEGER, Chairwoman

ART R. CARTER, Board Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

FILED ON: JANUARY 21, 2011