

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

TRI-COUNTY, INC.
2475 Stockton Street
Napa, CA 94559

Employer

Docket No. 04-R1D5-3927

DECISION AFTER
RECONSIDERATION

The Occupational Safety and Health Appeals Board (Board) issues the following decision after reconsideration, pursuant to the authority vested in it by the California Labor Code. This decision is rendered in response to the Board's Order of Reconsideration issued on September 25, 2007.

JURISDICTION

From September 3, 2004 through September 28, 2004 the Division of Occupational Safety and Health (Division) inspected a place of employment at 200 Tower Road, Napa, California, operated by Tri-County, Inc. (Employer). On October 4, 2004 the Division issued a citation to Employer alleging a general violation of section 1592(e) of the occupational safety and health standards and orders found in Title 8, California Code of Regulations and proposed a civil penalty of \$300 for the violation.

EVIDENCE

Employer timely appealed the citation, and in due course on February 28, 2007 the proceeding was duly noticed for a hearing before an Administrative Law Judge (ALJ) of the Board. The envelope in which the notice of hearing was mailed to Employer was returned to the Board by the U.S. Postal Service marked "Return to Sender, Not Deliverable as Addressed, Unable to Forward."

On March 8, 2007, the Board sent Employer a “Notice of Intent to Dismiss Appeal & Order Cancelling Hearing” to Employer’s address on file with the Board. That Notice gave Employer 10 days to provide the Board with Employer’s current address. The envelope was also returned to the Board, marked as was the notice of hearing envelope. A telephone message was left for Employer by the Board at the telephone number in the Board’s records.

On May 21, 2007, an ALJ of the Board issued an Order Dismissing Appeal. On its own motion the Board ordered reconsideration of and stayed that Order pending a decision after reconsideration in order to allow Employer time to provide its proper address and telephone number to the Board, pursuant to section 355(a) of the Board’s regulations. The Order of Reconsideration was sent to both addresses the Board has for Employer, and both mailings were returned, as above, as undeliverable and not able to be forwarded. Attempts to contact Employer by telephone were also unsuccessful.

ISSUE

Whether Employer’s appeal may be dismissed for failure to comply with Board regulation section 355(a).

FINDINGS AND REASONS FOR DECISION AFTER RECONSIDERATION

The Board’s attempt to set this proceeding for hearing was frustrated when the notice of hearing was undeliverable. Employer has not complied with its obligation to update its address and telephone number, as required by Board regulation section 355(a), which states:

“The Appeals Board shall maintain in each proceeding an official address record which shall contain the names and addresses of all parties and intervenors and their representatives, agents, or attorneys of record. Any change or substitution in such information must be communicated promptly in writing to the Appeals Board.”

Further, the Board’s own attempts to contact Employer by mail and telephone have been unsuccessful. Accordingly, the Board finds that Employer has failed to comply with section 355(a), that Employer’s appeal should be dismissed, and the ALJ’s May 21, 2007 Order Dismissing Appeal should be reinstated.

The Board has declined to reinstate appeals where a party failed to comply with section 355(a), *Pacific Stone Design, Inc.*, Cal/OSHA App. 04-4280, Denial of Petition for Reconsideration (Aug. 16, 2007); *Brothers Deli*, Cal/OSHA

App. 04-1068, Denial of Petition for Reconsideration (Dec. 6, 2006); *Regional Steel Corporation*, Cal/OSHA App. 04-2688 Denial of Petition for Reconsideration (Jan. 4, 2007).”]

DECISION AFTER RECONSIDERATION

Employer’s appeal is denied. We affirm and reinstate the May 21, 2007 Order Dismissing Appeal.

CANDICE A. TRAEGER, Chairwoman
ROBERT PACHECO, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: November 2, 2007