

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

In the Matter of the Appeal of:

CORE GENERAL CONTRACTOR
dba CORE BUILDERS
470 South Market Street
San Jose, CA 95113

Employer

Docket No. 08-R1D2-1379

**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 taken this matter under reconsideration on its own motion, renders the following decision after reconsideration.

JURISDICTION

On December 19, 2007, a representative of the Division of Occupational Safety and Health (the Division) conducted an investigation at a place of employment maintained by Core General Contractor dba Core Builders (Employer) at 1898 Senter Road, San Jose, California.

On March 18, 2008, the Division issued one Citation alleging a violation of section 1620(b)(4), which was appealed. The matter was scheduled for hearing on June 30, 2009. Prior thereto, the parties reached a settlement agreement, and jointly informed the Administrative Law Judge (ALJ) of the terms thereof. An Order issued on July 28, 2008, indicating the Division withdrawal of the citation, on the attached summary table, as the terms of the agreement.

On August 26, 2009, the Board order reconsideration of this matter on its own motion.

ISSUE

Whether there was good for withdrawal of Citation 1, Item 1.

**REASONS
FOR
DECISION AFTER RECONSIDERATION**

Citation 1, Item 1, alleges a general violation of section 1620(b)(4) [controlling employer did not place the temporary railing on the side of the post which will afford the greatest support and protection to employees].

DECISION AFTER RECONSIDERATION

The Employer and the Division entered in to terms of settlement which was accepted by the ALJ in the Order issued on July 28, 2009. The Board has held that a voluntary settlement agreement will not be reconsidered by the Board absent an allegation of fraud or misunderstanding induced by the other party. (*Perryman Mechanical, Inc.*, Cal/OSHA App. 08-2593, Denial of Petition for Reconsideration (Nov. 12, 2009) and Board Regulation section 364.2. No such allegations are made here; therefore, the Employer's appeal is granted.

CANDICE A. TRAEGER, Chairwoman
ART R. CARTER, Board Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: JANUARY 27, 2011