

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

In the Matter of the Appeal of:

GRISWOLD INDUSTRIES
P.O. Box 1325
Newport, CA 92659

Employer

Docket No. 09-R6D2-0982

**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 March 11, 2009, the Division of Occupational Safety and Health (the Division) issued to Griswold Industries (Employer) four citations alleging six violations of Title 8, Cal. Code of Regulations. Employer filed timely appeals contesting all six items in the citations.

This matter came on regularly for a scheduled status conference before an Administrative Law Judge (ALJ) for the Board. The matter was settled at that conference, and memorialized in an Order, and an attached summary table, dated July 28, 2009. In the Order, the ALJ stated "Good cause having been shown, the stipulation of the parties quoted below is accepted and the matter is resolved as set forth in the attached summary table." The Order further recited that the parties entered in to the agreement to avoid protracted litigation and the costs associated therewith. However, neither the Order nor the summary table specified the nature of the good cause justifying the reclassification of Citation 2, Item 1, from a serious to a general violation.

On August 25, 2009, the Board on its own motion ordered reconsideration of the ALJ Order pertaining to the existence of good cause for the reclassification of Citation 2, Item 1.

Employer and the Division submitted Answers to the Order of Reconsideration setting forth the factual basis for agreement relevant to reclassification of Citation 2, item 1.

ISSUE

Whether there was good to reclassify of Citation 2, Item 1.

**REASONS
FOR
DECISION AFTER RECONSIDERATION**

Board regulation 364.2 states “(a) Upon a showing of good cause, the Appeals Board may dispose of the issues on appeal by granting a written motion of the parties made at any time, or an oral motion of the parties made on the hearing record or in the prehearing conference.” Absent allegations or indications of fraud, the Board has recognized the Division’s prosecutorial discretion to withdraw citations as part of negotiated settlements. (*Northern California Paper Recyclers, Inc.*, Cal/OSHA App. 09-2352, Denial of Petition for Reconsideration (Jun. 1, 2010); *California Dept. of Forestry*, Cal/OSHA App. 85-1379, Denial of Petition for Reconsideration (Aug. 28, 1986).) Here, reclassification of the citation was a result of the Employer providing additional evidence regarding the alleged violation. The Division re-evaluated all of the evidence prior to the hearing and concluded there was insufficient evidence to establish the violation created a substantial probability of serious physical harm. It appears it appropriately exercised its prosecutorial discretion and chose to reclassify the citation based on new evidence provided by Employer. On this record it is appropriate to accept the agreement and stipulation of the parties. (*E & H 126 Investment Inc*, Cal/OSHA App. 08-3994, Denial of Petition for Reconsideration (Jul. 30, 2009); see also *County of Sacramento v. Workers’ Comp. Appeals Bd.* (3rd Dist. 2000) 77 Cal.App.4th 1114.)

Therefore, the ALJ’s Order resolving the matter is affirmed and the terms of the settlement as set forth in the summary table are reinstated, with the additional statement that Citation 2, Item 1 was reclassified based on new evidence provided by Employer.

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

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: JANUARY 28, 2011