

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

In the Matter of the Appeal of:

J & W WALKER FARMS  
P.O. Box 830  
Merrill, OR 97633

Employer

Docket No. 09-R2D1-1949

**DECISION AFTER  
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code issues the following Decision After Reconsideration in the above entitled matter.

**JURISDICTION**

J&W Walker Farms (Employer) operated a place of employment in California in October 2008. One of its employees was injured while working at that location on October 31, 2008. Subsequently the Division of Occupational Safety and Health (Division) issued citations to Employer alleging violations of applicable workplace safety and health requirements. Employer timely appealed the citations. Thereafter the parties agreed to resolve the issues by stipulation presented to an administrative law judge (ALJ) of the Board.

On June 30, 2009, the ALJ issued an Order reflecting the stipulation of the parties and further assessing civil penalties for the alleged violations.

On its own motion the Board ordered reconsideration (Labor Code section 6614(b)) of the ALJ's Order on July 23, 2009, with regard to the citation alleging a violation of Title 8 California Code of Regulations section 342(a) [failure timely to report a workplace injury].

Employer and the Division each filed answers to the Board's Order of Reconsideration.

## **EVIDENCE**

There has been no evidentiary hearing in this proceeding. The evidence consists of the stipulations of fact and other statements and admissions of the parties, and the answer each party submitted after the Board ordered reconsideration of this matter.

## **ISSUES**

Whether there was a basis for the Administrative Law Judge's inference that Employer did not make a reasonable inquiry into the nature of the injury.

When did Employer report the injury to the Division?

## **FINDINGS AND REASON FOR DECISION AFTER RECONSIDERATION**

The Board has fully reviewed the record in this case, including the assertions of fact, arguments and authorities presented in the parties' respective answers to the Order of Reconsideration. Those answers have provided sufficient additional information for the Board to satisfy itself concerning the issues which gave rise to its Order of Reconsideration. Based on our independent review of the record, we find that the ALJ's Order was proper, based on substantial evidence in the record as a whole, and that the facts support the Order.

Section 342(a) requires employers to report serious injuries within 8 hours of learning of the injury, or 24 hours if there are exigent circumstances. In pertinent part, a serious injury is defined as one requiring hospitalization for more than 24 hours for other than observation. (Labor Code 6302(h).) Those requirements caused us to ask when Employer knew or should have known that its employee's injury was serious, and thus when the reporting period commenced to run.

Based on the record, we find that Employer learned on November 21, 2008 that its employee had had surgery on November 11, 2008 to treat the injury. Due to medical confidentiality concerns, the treating hospital's personnel did not reveal whether the employee's post-operative stay in the hospital was for observation or additional treatment. What information Employer was given, however, was sufficient to put it on notice on November 21, 2008, of there being a sufficient likelihood of the injury being serious, and thus reportable, that additional inquiry was required.

Employer reported the injury to the Division on November 26, 2008. Employer did not allege that between November 21 and November 26 it made inquiry to its worker's compensation insurance carrier or any other persons who may have had information regarding the employee's treatment and

condition. There is, therefore, no information in the record on which to conclude the five day delay in reporting the injury was reasonable. Thus, we find the ALJ reasonably inferred that Employer had failed to make diligent inquiry as to the nature of the injury and the post-surgical course of treatment, and that a reporting violation of the standard was established.

### **DECISION**

The June 30, 2009 Order of the ALJ is hereby affirmed and reinstated.

CANDICE A. TRAEGER, Chairwoman  
ROBERT PACHECO, Member  
ART R. CARTER, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
FILED ON: NOV 2, 2009