

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

HONEYBAKED HAMS
29 Musick Street
Irvine, CA 92318

Employer

Docket No. 13-R3D1-0941

**DENIAL OF PETITION
FOR RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code hereby denies the petition for reconsideration filed in the above entitled matter by Honeybaked Hams (Employer).

JURISDICTION

Commencing on January 10, 2013, the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On February 22, 2013, the Division issued a citation to Employer alleging a violation of occupational safety and health standards codified in California Code of Regulations, Title 8, section 342(a).¹

Employer timely appealed.

Thereafter administrative proceedings were held before an Administrative Law Judge (ALJ) of the Board, including submission to the ALJ of stipulations of fact by the parties, and communications among the parties and the ALJ regarding disposition of the proceeding as a result of the stipulations.

On April 10, 2014, the ALJ issued an Order (Order) sustaining the citation and imposing a \$5,000 civil penalty payable over a period of 24 months. The ALJ issued an Amended Order on April 30, 2014 to correct typographical errors in the Order. For present purposes the Order and Amended Order may be considered a unified document and are referred to as the "Order."

¹ References are to California Code of Regulations, Title 8 unless specified otherwise.

Employer timely filed a petition for reconsideration.

The Division did not answer the petition.

ISSUE

Was the alleged violation proved by virtue of the parties' stipulations?

REASON FOR DENIAL OF PETITION FOR RECONSIDERATION

Labor Code section 6617 sets forth five grounds upon which a petition for reconsideration may be based:

- (a) That by such order or decision made and filed by the appeals board or hearing officer, the appeals board acted without or in excess of its powers.
- (b) That the order or decision was procured by fraud.
- (c) That the evidence does not justify the findings of fact.
- (d) That the petitioner has discovered new evidence material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.
- (e) That the findings of fact do not support the order or decision.

Employer's petition contends the ALJ acted in excess of his power, the evidence does not justify the findings of fact, and the findings of fact do not support the Order.

The Board has fully reviewed the record in this case, including the arguments presented in the petition for reconsideration. Based on our independent review of the record, we find that the Order was based on substantial evidence in the record as a whole and appropriate under the circumstances.

The parties submitted an "Agreed Statement of Facts" in this matter. Among those stipulations it was agreed that one of Employer's employees suffered the fatal rupture of a brain aneurism while on Employer's premises on December 31, 2012. The stipulated facts further state that the decedent went on a 30-minute meal break at approximately 12:35 p.m., did not return within 30 minutes, and was found unconscious and unresponsive on Employer's premises at approximately 1:30 p.m. the same day. Employer did not report that event to the Division.

The stipulations were that the decedent went to a McDonalds next door for lunch and to "get some sun." (Quotation of decedent's stated intention.) We infer that he walked to McDonalds and back, since the two establishments are

apparently adjacent to each other and because walking would be in keeping with the decedent's stated intentions. Since he was later found on a portion of Employer's premises not used for work, we further infer he chose to eat and/or relax ("get some sun") there. Given the cause of his demise, we also conclude he was fatally stricken while so doing.

After investigating the event, the Division cited Employer for failure to report the death to the Division as required by section 342(a). The citation stated that the death was "non-work related[.]" Section 342(a) states, in pertinent part: "Every employer shall report immediately by telephone or telegraph to the nearest District Office of the Division of Occupational Safety and Health any serious injury or illness, or death, of an employee occurring in a place of employment or in connection with any employment." Section 342(a), in pertinent part, defines "immediately" as no longer than 8 hours after the employer knows of the death.

It was stipulated that the employee in question was stricken on Employer's premises. Since section 342(a) requires employers to report the "death of an employee occurring in a place of employment" this event had to be reported to the Division. Section 342(a) does not except injuries, illnesses, or deaths from the reporting requirement merely because they are not work related.

We recently explained, in a related context, our understanding of the policy for the reporting requirement. We stated our belief that requiring reports of illnesses, injuries and deaths occurring at work, even if ostensibly not work related, provides the Division with the opportunity to acquire data from which individual employers and first responders would not have sufficient perspective and expertise to recognize patterns indicating workplace hazards. (See *Orange County Fire Authority*, Cal/OSHA App. 10-3667, Decision After Reconsideration (Jan. 3, 2013).) We continue to believe that section 342(a), particularly in view of the language of Labor Code section 6302(h) [serious illness includes occurrence "in a place of employment"], requires reporting of employee injuries, illnesses and deaths which occur on an employer's premises, even if they are not work related.

The above reasoning addresses the contentions Employer raises in its petition for reconsideration.

First, the decedent was an employee and his illness arose and/or his death occurred on Employer's premises. These were stipulated facts.

Second, regardless of whether decedent's death was "recordable" under applicable regulations (which we need not and do not decide), it was required to be reported under section 342(a). Recordability and reportability are separate and distinct requirements. (Compare sections 342(a) and 14300.5.)

Third, section 342(a) does apply in the circumstances, despite Employer's belief to the contrary. Employer cites the Division's "User's Guide to Cal/OSHA – California Occupational Safety and Health Program" which includes the term "work-related" in its summary of the requirements for reporting fatalities and

serious injuries. That summary is incomplete insofar as it does not mention the requirement to report on-premises events even if they are not work-related, although the text also notes that “suspected work-related [events]” are also to be reported. We note that the User’s Guide states on its first page (after cover), in highlighted text, that “it is not intended to provide interpretation of the law and regulations.” Thus, citation of and reliance on the User’s Guide’s informal summary of the reporting requirement is not justified.

Employer also cites the federal OSHA Handbook on recordkeeping as authority supporting its position that the death was not reportable. As we pointed out above, *recording* injuries and illnesses is a separate and distinct obligation of employers from *reporting* serious injuries, illnesses and deaths under section 342(a). Moreover, not only are federal rules and requirements not on point, they are not applicable. (*United Air Lines, Inc. v. Occupational Safety and Health Appeals Bd.* (1982) 32 Cal.3d 762.)

Finally, Employer states that the parties entered into the stipulation of facts to be “the basis of a decision, . . . and no decision was rendered on the stipulated facts of the appeal in this matter.”

The Board’s record indicates that there was an “at hearing disposition, order at hearing to issue” in this matter. It appears the parties presented their stipulations to the ALJ. There is no recording or transcript of the discussion among the parties and the ALJ during which the disposition was communicated. Employer appears to have formed the belief that the ALJ would issue a “decision,” as opposed to the Order. To the extent Employer anticipated, reasonably or not, there would be a written decision regarding its appeal based on the parties’ stipulation, this decision by the Board must suffice.

DECISION

For the reasons stated above, the petition for reconsideration is denied.

ART R. CARTER, Chairman
ED LOWRY, Member
JUDITH S. FREYMAN, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: June 25, 2014