

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

In the Matter of the Appeal of:

OC TURF AND PUTTING GREENS
24548 Sunshine Drive
Laguna Niguel, CA 92677

Employer

Docket. 2013-R3D2-1751

**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 OC Turf and Putting Greens (Employer).

JURISDICTION

Commencing on January 15, 2013 the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On May 15, 2013, the Division issued a citation to Employer alleging three violations of occupational safety and health standards codified in California Code of Regulations, Title 8.¹

Employer timely appealed.

Thereafter administrative proceedings were held before an Administrative Law Judge (ALJ) of the Board, including a duly-noticed contested evidentiary hearing. At the hearing Employer withdrew its appeal of two of the three cited violations. The third item on appeal remained at issue it; alleged a regulatory violation of section 342(a) [failure to report a serious injury to employee]. As to that allegation Employer stipulated that one of its employees did suffer a serious injury (as defined; see Labor Code § 6302(h)) while working for Employer and that Employer did not report the injury to the Division as required.

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

On April 3, 2014, the ALJ issued a Decision (Decision) which denied sustained the appealed citation and imposed a civil penalty for the violation.

Employer timely filed a petition for reconsideration.

The Division answered the petition.

ISSUE(S)

Did the Decision correctly find Employer in violation of § 342(a) and, if so, was the penalty imposed appropriate?

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 Decision was issued in excess of the ALJ's powers, the evidence does not justify the findings of fact, and the findings of fact do not support the Decision.

The Board has fully reviewed the record in this case, including the arguments presented in the petition for reconsideration. The Board has taken no new evidence in reviewing the record. Based on our independent review of the record, we find that the Decision was based on a preponderance of the evidence in the record as a whole and appropriate under the circumstances.

Section 342(a) requires that employers timely report serious injuries of illnesses occurring to their employees while at work to the Division. The report must be made within 8 hours, or, in the event of extenuating circumstances, within 24 hours of the time when the employer knows or should have known of the injury or illness. For these purposes, "serious" is defined as requiring inpatient hospitalization for other than medical observation for a period in

excess of 24 hours among other factors. As noted, Employer stipulated that the injury involved was “serious.”

Employer argues that the accident which occurred was entirely the injured employee’s fault. The cause or reason for the injury is not the controlling consideration. Rather, it is whether the serious injury occurred “in a place or employment or in connection with any employment[.]” (Lab. Code § 6302(h).) It is not disputed that the injury involved here occurred at a place of employment. It was, accordingly, required to be reported by section 342(a) and Labor Code 6409.1(b).

Employer did not appeal the existence of the section 342(a) violation, and therefore it is established by operation of law. (Board regulation § 361.3.) That renders much of Employer’s petition moot; we address the contentions in the interest of thoroughness.

Employer argues that when he reported the injury to his worker’s compensation insurance carrier, the carrier’s representative inquired whether Employer had reported the injury to the Division. When Employer responded that it had not, the representative stated he would do so for Employer. An employer may fulfill its reporting obligation through the action of an authorized third person. (§ 342(d); *Helpmates Staffing Services*, Cal/OSHA App. 05-2239, Decision After Reconsideration (Jan. 20, 2011).) The ALJ acknowledged that claim but did not find it to be true. It did not appear that anyone reported the injury on Employer’s behalf. If the agent fails to report on behalf of the employer, the employer is in violation of section 342(a).

Employer argues that no one from the Division informed him of his reporting obligation. It is not the Division’s duty to do so. By doing business in California Employer assumes the obligation of complying with its several laws and regulations. And, as the Decision noted, ignorance of the law is no excuse. (*Nick’s Lighthouse*, Cal/OSHA App. 05-3086, Denial of Petition for Reconsideration (Jun. 8, 2007).)

Lastly, Employer argues that it would be a miscarriage of justice to impose a penalty on him under the circumstances. We have interpreted Labor Code section 6409.1(b) to require imposition of a \$5,000 civil penalty when an employer fails to report a serious injury except in extraordinary circumstances. (*Allied Sales and Distribution, Inc.*, Cal/OSHA App. 11-0480, Decision After Reconsideration (Nov. 29, 2012).) The record does not reveal any circumstances warranting a departure from the norm. Moreover, the ALJ did consider Employer’s financial circumstances and authorized payment of the penalty over a twelve month period in light of them. We agree with the analysis and assessment of the ALJ, and affirm her Decision.

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 9, 2014