

BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:

ORANGE COUNTY FIRE AUTHORITY
1 Fire Authority Road
Irvine, CA 92602

Employer

Docket 12-R3D1-0364

**DECISION AFTER
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code, having taken this matter under reconsideration on its own motion, and having taken the petition for reconsideration filed by the Orange County Fire Authority (OCFA) under submission, renders the following decision after reconsideration.

JURISDICTION

On January 9, 2012, an employee of the Westminster School District suffered an injury at her place of employment located in Westminster, California. The school district requested medical assistance from the OCFA, and OCFA personnel responded to the scene. The employee had fallen while at work and injured her leg; however OCFA was not able to determine the extent of her injury at the scene. OCFA provided assistance until an independent third-party ambulance service arrived to transport the injured employee to the hospital for treatment as necessary. Upon transferring custody and care of the injured employee to the ambulance personnel, OCFA's involvement in the incident ended. OCFA did not report the employee's injury to the Division.

After learning of the subject injury and OCFA's failure to report, the Division issued a citation to OCFA for an alleged violation of section 342(b) [first responders required to report serious injuries and illnesses to Division].¹

OCFA filed a timely appeal of the citation.

¹ Unless otherwise specified, all references are to California Code of Regulations, Title 8.

Administrative proceedings were held, including an evidentiary hearing before an Administrative Law Judge (ALJ) of the Board. After considering the evidence and arguments of counsel, the ALJ issued a Decision on December 8, 2012, finding that OCFA violated section 342(b).

On its own motion the Board ordered reconsideration of the Decision on December 20, 2012, in order to consider whether OCFA had a duty to report the injury. Subsequently, OCFA filed its own petition for reconsideration, which the Board granted. Both the Division and OCFA filed Answers to the Board's Order of Reconsideration.

ISSUES

Did OCFA violate section 342(b) by not reporting this injury?

EVIDENCE

Upon arrival at the injury scene, OCFA personnel put a brace on the injured leg, and offered the injured employee (hereinafter, "employee") pain medication, which she declined. The OCFA captain in charge believed that the injury was either a sprain or a broken bone, but had no means such as an x-ray machine to make a specific determination. Based on the employee's behavior, apparent condition, and refusal of pain medication, he believed the injury not to be serious. The OCFA responders remained with the employee until the ambulance arrived to provide further care and transportation to the hospital.

Once at the hospital, the employee was attended to by nurses and was given pain medication, however she did not see a doctor until the next day.² It was then determined she had suffered a fractured tibia. She was offered two treatment options: having her leg placed in a cast, which would be done that day and she could go home; or surgical reduction of the fracture, which would involve a stay in the hospital for the procedure. She elected to have the fracture repaired surgically, and was hospitalized for more than 24 hours as a result.

DECISION AFTER RECONSIDERATION

In making this decision, the Board relies upon its independent review of the entire record in the proceeding. The Board has taken no new evidence. The Board has reviewed and considered the briefs and arguments of the parties presented during the hearing and in their respective Answers to the Order of Reconsideration, and in OCFA's petition for reconsideration.

² The employee remained in the hospital overnight.

This proceeding presents questions of first impression: Does a first responder have a duty under section 342(b) to report an injury or illness to the Division when it is not known or reasonably believed to be serious? Does the first responder have a duty to determine, through additional investigation, whether an injury or illness was serious after it transfers custody and care of an injured employee to others?

First responders are required to report serious injuries under section 342(b).

Section 342(b) provides:

Whenever a state, county, or local fire or police agency is called to an accident involving an employee covered by this part in which a serious injury, or illness, or death occurs, the nearest office of the Division of Occupational Safety and Health shall be notified by telephone immediately by the responding agency.³

Section 330(h) then defines what a serious injury or illness is:

“any injury or illness occurring in a place of employment or in connection with any employment which requires inpatient hospitalization for a period in excess of 24 hours for other than medical observation or in which an employee suffers a loss of any member of the body or suffers any serious degree of permanent disfigurement[.]” (§ 330(h).)

Accordingly, a first responder called to an injury accident must make a reasonable and rational determination as to whether the injury or illness is serious, thereby triggering its duty to report the injury to the Division. Such a determination will be based on the situation and the first responder’s experience and expertise. Some determinations will be easy, for example when the injured employee has suffered loss of a body part or is severely burned, or is deceased at the scene. As another example, a first responder may transport an injured employee to a hospital or clinic, and that same care facility may then inform the first responder that the employee suffered a “serious” injury or illness. In both situations, the first responder knows of the serious injury and is therefore required to report the injury to the Division.

Here, however, we have a different situation. OCFA did not know the injury consisted of a broken leg, and had no means to make that diagnosis when it attended to the injured employee at the school district. The OCFA therefore reasonably believed that the injury was not serious. Additionally,

³ It is not disputed that OCFA is a “county fire agency,” or that the injured party was an employee covered under section 342(b).

OCFA did not transport the injured employee to the hospital, and received no information concerning the extent of the injury from hospital staff. OCFA therefore did not know of the serious injury, and had no obligation to report under section 342(b).

The Legislature's intent in enacting Labor Code section 6409.1 (requiring employers to report serious injuries) in conjunction with section 6409.2 (requiring first responders to report serious injuries) was to establish a dual reporting regime to increase the probability that serious injuries and illness will be reported to the Division. We do not discern a legislative intent that first responders be obligated to report all occupational injuries or illnesses to which they respond regardless of the nature of the injury or illness. Such an interpretation is inconsistent with the plain language of Labor Code section 6409.2. Nor do we read the statute to obligate first responders to further investigate events to which they respond where they cannot reasonably know that the injury *was* serious. Imposing such a duty to further investigate would be reading terms into the statute and create an additional burden on first responders that would interfere with their primary obligation, namely to respond to calls for assistance. We have acknowledged that the Board cannot impose stricter or more detailed requirements than those established by a safety order. (*Mobil Oil Corp.*, Cal/OSHA App. 00-222, Decision After Reconsideration (Apr. 29, 2002).) Likewise we may not read terms into a statute. (See *Lockheed Missiles and Space Co., Inc.*, Cal/OSHA App. 74-629, Decision After Reconsideration (Apr. 10, 1975) [when interpreting a statute, judge may ascertain and declare what is expressed, not insert what may have been omitted]; *Auchmoody v. 911 Emergency Services* (1989) 214 Cal.App.3d 1510, 1517 [same rules of interpretation applicable to statutes and regulations].)

While the evidence does not support a violation of section 342(b) in this particular case, we emphasize that first responders must exercise their best judgment and expertise in determining whether the injury or illness is serious. The evaluation of an injury or illness by first responders should be conservative, by which we mean the tendency should be to report the event to the Division in a less than clear case. However, this evaluation need only be based on facts known at the time aid is rendered when the injured person is in the custody and care of the first responder. The unanticipated development of the injury, after custody has been transferred to other care givers, into a serious one does not trigger the first responder's reporting requirement. The obligation under the statute is to report when the accident to which the agency responds is serious. The present tense of the statutory language conveys that the seriousness of the injury must be evident at the time of the response. Here, the extent of the injury was reasonably assessed to be minor, a sprain or a fracture requiring casting, neither of which meets the definition of a "serious injury." Therefore, the reporting requirement did not apply.

DECISION AFTER RECONSIDERATION

We reverse the Decision of the ALJ and grant OCFA's appeal of the citation.

ART R. CARTER, Chairman
ED LOWRY, Board Member
JUDI S. FREYMAN, Board Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: APRIL 8, 2013