BEFORE THE

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

DEPARTMENT OF INDUSTRIAL RELATIONS

STATE OF CALIFORNIA

In the Matter of the Appeal of: ANNING-JOHNSON COMPANY 13250 Temple Avenue Industry, California 91746	DOCKET NO. 85-R3D1-1438 DECISION AFTER RECONSIDERATION

The Occupational Safety and Health Appeals Board, acting pursuant to authority vested in it by the California Labor Code and having granted the petition for reconsideration filed in the above-entitled matter by Anning-Johnson Company (Employer), makes the following decision after reconsideration.

JURISDICTION

On August 9, 1985, a representative of the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment maintained by Employer. On August 21, 1985, the Division issued to Employer a citation alleging a repeat/general violation of Title 8, California Administrative Code.[1] A civil penalty was proposed.

Employer filed a timely appeal from the citation contesting the existence of the alleged repeat/general violation of Section 1630(a), and from the amount of the proposed civil penalty. After a hearing before an administrative law judge of the Appeals Board, the appeal was denied in a decision dated April 24, 1986.

On May 23, 1986, a timely petition for reconsideration was filed by Employer. The Appeals Board granted the petition on June 9, 1986. The Division did not answer the petition.

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

Citation No. 1
Repeat/General
8 Cal. Adm. Code 1630(a)

ISSUE

Is the evidence sufficient to establish a repeat/general violation of Section 1630(a) for failing to install and operate a construction passenger elevator for workers on a building 65 feet in height above ground level?

Must the Division observe workers at a level 60 feet or more above ground level to establish exposure to the alleged violation?

FINDINGS AND REASONS FOR DECISION AFTER RECONSIDERATION

Upon its independent review, the Appeals Board adopts and incorporates by this reference the summary of evidence on pages 2 and 3 of the April 24, 1986, decision. The parties stipulated to the following facts. On the date of inspection, Employer was engaged in the installation of walls, ceilings, and metal floor and roof decks in a building under construction. The top of the building's parapet wall adjacent to the roof was approximately 65 feet above ground level. Employer's employees were observed working approximately 45 feet above the ground level entrance to the building. There was no construction passenger elevator for hoisting workers. The citation on appeal was properly classified repeat.

Employer's sole contention is that there can be no exposure to the hazard against which Section 1630(a) was intended to protect until workers are required to work at a height of 60 feet or more; exposure is dependent upon workers having to climb more than five flights of stairs. Section 1630(a) provides in pertinent part:

> In addition to the stairways required in Section 1629, a construction passenger elevator for hoisting workers shall be installed and in operation on or in any building, or structure, 60 feet or more in height above or 48 feet in depth below ground level.
>
> The building or structure height shall be determined by measuring from ground level to the highest structural level including the parapet walls, mechanical rooms, stair

towers and elevator penthouse structures but excluding antennas, smokestacks, flag poles and other similar attachments...

The Division defended by asserting and the administrative law judge found, that Section 1630(d) establishes the point of exposure. It provides:

> Landings shall be provided for the passenger elevator on or in buildings or structures at the upper-most floor and at intervals not to exceed 3 floors or 36 feet.

Reasoning that because employees were working at the 45-foot level without benefit of a construction passenger elevator prescribed by Section 1630(a) with a first landing at least at the 36-foot level as required by Section 1630(d), exposure was established, the administrative law judge found a violation. The Appeals Board agrees.

Employer responds by arguing that Section 1630(a) must stand or fall on its own without reference to Section 1630(d). The Appeals Board rejects this argument. The administrative law judge correctly held that Section 1630(a) is the charging or performance safety order, that Section 1630(d) is the prescription or specification safety order, and that both must be read together in determining whether a violation of the general performance requirement under subsection (a) existed, citing inter alia John J. Lessman & Son, Inc. dba ABC Plumbing, Heating & Cooling, OSHAB 79-1330, Decision After Reconsideration (Jan. 9, 1985). The various parts of a regulatory enactment must be harmonized by considering the particular clause or section in the context of the regulatory framework as a whole, and significance should be given, if possible, to every word, phrase, sentence, and part of the regulatory enactment. (Moyer v. Workmen's Comp. Appeals Bd. (1973) 10 Cal.3d 222, 230.)

Employer attacks such outcome as too illogical to reflect the intent of the safety order by noting an anomaly created by the administrative law judge's reasoning. An employer constructing a 59 foot building may require employees to climb stairs to the 59 foot level while an employer constructing a 60 foot building must provide a passenger elevator for employees working at the 37 foot level. The Appeals Board finds the argument without merit. The provisions of Section 1630(a) are clear and precise: a building 60 feet or more in height must be provided with an operating construction passenger elevator. None was present. The Appeals Board cannot substitute its judgment for that of the Occupational Safety and Health Standards Board,

the state agency charged by statute with the responsibility of adopting occupational safety and health standards. (Howe Industries, Inc., OSHAB 76-1168, Decision After Reconsideration (Oct. 17, 1980).) A violation of Section 1630(a) was established and its repeat classification stipulated to by Employer. The amount of the proposed civil penalty was not raised in Employer's petition for reconsideration and the issue is waived pursuant to Labor Code Section 6618.

DECISION AFTER RECONSIDERATION

The decision of April 24, 1986, denying the appeal, is affirmed. The appeal from a repeat/general violation of Section 1630(a) and from the amount of the proposed civil penalty of $135, is denied.

Elaine W. Donaldson
ELAINE W. DONALDSON, Chairman

L. A. Harrington
L. A. HARRINGTON, Member

Michael R. Monagan
MICHAEL R. MONAGAN, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

DATED AND FILED AT SACRAMENTO, CALIFORNIA

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