

Deo/mm

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of
DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,
Complainant,

vs.

AL'S AUTO ELECTRIC
AND SUPPLY, INC.,
Respondent.

CASE NO. OSAB 97-006 (WH)
(OSHCO No. C4756)
(Report No. #120606165)

FILED
MAR -9 12:44

DECISION AND ORDER

This Occupational Safety and Health case is before the Board on a written notice of contest filed by AL'S AUTO ELECTRIC AND SUPPLY, INC. ("Respondent"), to contest a Citation and Notification of Penalty ("Citation") issued by the DIRECTOR of the DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, via the Division of Occupational Safety and Health ("Complainant").

Respondent was not present at the trial held on February 10, 1998.

The issues before the Board are:

- (1) Whether Respondent violated Standard Section 12-65-1(g).
 - a. If so, whether the characterization of the violation as "serious" is appropriate.
 - b. If so, is the imposition and amount of the proposed \$450.00 penalty appropriate.
- (2) Whether Respondent violated Standard Section 12-72-2(b).
 - a. If so, whether the characterization of the violation as "serious" is appropriate.

- b. If so, is the imposition and amount of the proposed \$1,050.00 penalty appropriate.
- (3) Whether the imposition and amount of the proposed \$600.00 penalty for Respondent's violation of Standard Section 12-78.1-6(b)(2)(B) is appropriate.
- (4) Whether Respondent violated Standard Section 12-79-4.
 - a. If so, whether the characterization of the violation as "serious" is appropriate.
 - b. If so, is the imposition and amount of the proposed \$450.00 penalty appropriate.
- (5) Is the characterization of Respondent's violation of Standard Section 12-89-5(f)(4) as "serious" appropriate.
 - a. If so, is the imposition and amount of the proposed \$750.00 penalty appropriate.
- (6) Is the characterization of Respondent's violations of Standard 29 CFR Section 1910.1200(e)(1), Section 1910.1200(g)(1), and Section 1910.1200(h)(1) as "serious" appropriate.
 - a. If so, is the amount of the proposed \$1,050.00 penalty appropriate.

For the reasons stated below, we affirm the Citation for violations of HIOSH standard Sections 12-65-1(g), 12-72-2(b), 12-79-4, affirm Complainant's characterization of the violations, and modify Complainant's imposition of the proposed penalties.

FINDINGS OF FACT

1. Respondent is a business which repairs electrical and air conditioning ("AC") systems in automobiles, and restores used automobiles for resale.

2. Al Yamamoto is Respondent's owner.

3. On January 17, 1997, Charles Clark, a HIOSH compliance officer, conducted a general inspection of Respondent's workplace.

4. Five employees were working at the time of Mr. Clark's inspection.

5. Oily rags and paper towels were observed on the floor in the AC and bench work areas at the time of the inspection.

6. A lidless rubber trash can was located near the rags and paper towels.

7. Employees were working within ten feet of the rags and paper towels.

8. Acrylic lacquer thinner, Zep flash, and NAPA carburetor cleaners (hereinafter collectively referred to as "flammable products") were located near the rags and paper towels.

9. Respondent used these flammable products in its business.

10. At the February 10, 1998 hearing before the Board, Mr. Clark testified that the rags and paper towels could catch on fire and ignite the flammable products. The resulting fire could cause an employee to sustain first and second degree burns.

11. We find the possibility of such an accident occurring to be a reasonable possibility.

12. Respondent knew or could have known of the violative condition with the exercise of reasonable diligence.

13. Mr. Clark observed two portions of the floor in the back shop automobile area were slippery. Mr. Clark also observed

employees slipping and sliding on the floor in one of the two slippery areas.

14. Mr. Clark noticed that his own shoes slid easily on the floor in the other slippery area.

15. Mr. Clark testified that the slippery floor could cause an employee to slip, fall, and sustain a fractured hip or arm.

16. We find the possibility of such an accident occurring to be a reasonable possibility.

17. Respondent knew or could have known of the violative condition with the exercise of reasonable diligence.

18. Mr. Clark observed an oxygen cylinder in the back shop welding area. The cylinder, which was standing upright on the floor, was attached to hoses. The hoses were connected to a wall located directly behind the cylinder.

19. Employees would walk within one foot of the cylinder while working nearby.

20. Mr. Clark observed an employee in the back shop area using compressed air.

21. The employee reported that compressed air was used to clean automobile parts.

22. The air pressure measured seventy (70) pounds per square inch ("PSI") when tested with a Jem safety equipment air meter.

23. Mr. Yamamoto indicated that he had a safety nozzle but did not know where it was located.

24. Safety nozzles regulate air pressure so that it cannot exceed 30 PSI.

25. On March 5, 1997, Mr. Clark conducted a follow-up inspection of Respondent's workplace. Mr. Yamamoto had instructed his employees, sometime after the general inspection but before the follow-up inspection, not to use more than 30 PSI of compressed air for cleaning purposes.

26. Mr. Clark testified that misdirection of 70 PSI of compressed air could cause an employee to develop an embolism.

27. We find the possibility of such an accident occurring to be a reasonable possibility.

28. Respondent knew or could have known of the violative condition with the exercise of reasonable diligence.

29. At the time of inspection, a fluorescent light fixture and a battery charger in the back shop area were missing ground pins in the attachment plugs.

30. Mr. Clark testified that missing ground pins from equipment could cause an employee coming into contact with the equipment to be electrocuted.

31. We find the possibility of such an accident occurring to be a reasonable possibility.

32. The flammable products at Respondent's workplace contained the following chemicals: methylene chloride (dichloromethane), sodium metasilicate, and petroleum distillates (hereinafter collectively referred to as "hazardous chemicals").

33. At the time of Mr. Clark's inspection, Respondent did not have a written hazard communication program in effect.

34. Respondent did not have material safety data sheets ("MSDSs") available for the hazardous chemicals used in its workplace.

35. Respondent's employees had not been provided with information and training on the hazardous chemicals in Respondent's workplace.

36. In the Citation, Mr. Clark had reported that overexposure to any of the hazardous chemicals used in Respondent's workplace could contribute to one or more of the following: cumulative liver damage, central nervous system effects, chemical anoxia, and narcosis.

37. We find the possibility of such an accident occurring to be a reasonable possibility.

38. Respondent subsequently remedied every violation of the cited standards within the abatement period.

CONCLUSIONS OF LAW

1. HIOSH Standard Section 12-65-1(g) provides in full as follows:

(g) Oil soaked rags, paint saturated clothing or rags, waste, excelsior, and other combustible refuse shall be deposited in non-combustible, covered receptacles and disposed of daily.

We conclude that Respondent violated Standard Section 12-65-1(g) by allowing oily rags and paper towels to accumulate on

the floor of its workplace and by not providing a non-combustible, covered receptacle for the placement of such rags and towels.

a. A "serious violation" under Hawaii Revised Statutes ("H.R.S."), Section 396-3, is defined as follows:

a violation that carries with it a substantial probability that death or serious physical harm could result from a condition that exists, or from one or more practices, means, methods, operations, or processes that have been adopted or are in use, in a place of employment, unless the employer did not, and could not with the exercise of reasonable diligence, have known of the presence of the violation.

We have construed the term "serious violation" as any violation of a regulation which renders an accident with a substantial probability of death or serious injury possible. See Director v. Charles Pankow Builders, Ltd., OSAB 91-015 (Jan. 28, 1992).

The oily rags and paper towels created a fire hazard. We conclude that the violation was properly characterized as "serious," because it is a violation which renders an accident with a substantial probability of serious injury such as first and second degree burns possible.

b. We conclude that a penalty of \$50.00, for Respondent's violation of Standard Section 12-65-1(g), is appropriate.

2. Standard Section 12-72-2(b) provides in full as follows:

(b) All floor surfaces shall be maintained in a smooth, nonslippery condition and free from

holes or projections that might cause tripping.

Two portions of the floor in Respondent's workplace were slippery at the time of Mr. Clark's inspection. Employees were observed slipping and sliding on the floor. We conclude that Respondent violated Standard Section 12-72-2(b).

a. We conclude that the violation was properly characterized as "serious," because it is a violation which renders an accident with a substantial probability of serious injury such as a fractured hip or arm possible.

b. We conclude that a penalty of \$250.00, for Respondent's violation of Standard Section 12-72-2(b), is appropriate.

3. Respondent does not contest its violation of Standard Section 12-78.1-6(b)(2)(B), which was characterized as "serious."

Standard Section 12-78.1-6(b)(2)(B) provides in part as follows:

Cylinders should be stored in definitely assigned places away from elevators, stairs, or gangways. Assigned storage spaces shall be located where cylinders will not be knocked over or damaged by passing or falling objects, or subject to tampering by unauthorized persons.

Although employees would walk within one foot of the cylinder, the cylinder was attached to hoses which were connected to the wall behind it.

We conclude that a penalty of \$100.00, for Respondent's violation of Standard Section 12-78.1-6(b)(2)(B), is appropriate.

4. Standard Section 12-79-4 provides in full as follows:

Compressed air shall not be used for cleaning purposes except where reduced to less than 30 psi and then only with effective chip guarding and personal protective equipment which meets the requirements of chapter 64 of this title. The 30 psi requirement does not apply for concrete form, mill scale, and similar cleaning purposes.

An employee, who reported that compressed air was used to clean automobile parts, was using 70 PSI of compressed air at the time of Mr. Clark's inspection. The employee was not using a safety nozzle. At the time of inspection, a safety nozzle could not be located. Mr. Yamamoto subsequently instructed his employees not to use more than 30 PSI of compressed air for cleaning purposes. Based on the evidence presented, we conclude that Respondent violated Standard Section 12-79-4.

a. We conclude that the violation was properly characterized as "serious," because it is a violation which renders an accident with a substantial probability of serious injury such as an air embolism possible.

b. We conclude that a penalty of \$75.00, for Respondent's violation of Standard Section 12-79-4, is appropriate.

5. Standard Section 12-89-5(f)(4) provides that "[t]he path to ground from circuits, equipment, and enclosures shall be permanent and continuous."

We conclude that Respondent's violation of Standard Section 12-89-5(f)(4) was properly characterized as "serious," because it is a violation which renders an accident with a

substantial probability of serious injury such as electrocution possible.

a. We conclude that a penalty of \$200.00, for Respondent's violation of Standard Section 12-89-5(f)(4), is appropriate.

6. Standard 29 CFR Section 1910.1200(g)(1) requires employers to develop, implement, and maintain at each workplace, a written hazard communication program, describing how the criteria for labels and other forms of warning, MSDSs, and employee information and training will be met.

Standard 29 CFR Section 1910.1200(g)(1) requires employers to have a material safety data sheet ("MSDS") in the workplace for each hazardous chemical which they use.

Standard 29 CFR Section 1910.1200(h)(1) requires employers to provide employees with effective information and training on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new physical or health hazard is introduced into their work area.

We conclude that Respondent's violations of Standard 29 CFR Section 1910.1200(e)(1), Section 1910.1200(g)(1), and Section 1910.1200(h)(1) were properly characterized as "serious," because they are violative conditions which render accidents with a substantial probability of serious injury, such as: cumulative liver damage, central nervous system effects, chemical anoxia, and narcosis, possible.

a. We conclude that a penalty of \$50.00, for Respondent's violations of Standard 29 CFR Section 1910.1200(e)(1), Section 1910.1200(g)(1), and Section 1910.1200(h)(1), is appropriate.

ORDER

The Citation is hereby affirmed as to violations of HIOSH Standard Sections 12-65-1(g), 12-72-2(b), 12-79-4, and Complainant's characterization of the violations, and modified as to Complainant's imposition of the proposed penalties.

Respondent shall be liable and shall pay Complainant \$725.00 in penalties for violation of the above identified standards.

Dated: Honolulu, Hawaii, _____.

MAR - 9 1999


FRANK YAP, JR., Chairman

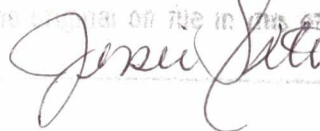

CAROL K. YAMAMOTO, Member


VICENTE F. AQUINO, Member

J. Gerard Lam, Esq.,
for Complainant

Al Yamamoto
for Respondent

I do hereby certify that the foregoing
is a true and correct copy of
the original on file in my office



NOTICE TO EMPLOYER:

You are required to post a copy of this Decision and Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted. Further,

you are required to furnish a copy of this Decision and Order to a duly recognized representative of the employees.