

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

Director, Department of Labor and Industrial Relations, Complainant,

vs

SEAKON, INC.,  
APPELLANT.

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) CASE NO. OSAB 79-1  
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STATE OF HAWAII  
FILED

DECISION AND ORDER

This occupational safety and health case came before the Labor and Industrial Relations Appeals Board on appeal by Seakon, Inc., from a Citation and Notification of Proposed Penalty issued by the Director of Labor and Industrial Relations, State of Hawaii, dated January 23, 1979.

The two (2) issues before the Board are:

1. Whether there was a violation of §223.2-3A, Occupational Safety and Health Standards, Rules and Regulations, State of Hawaii, and
2. Whether the proposed penalty for said alleged violation is appropriate.

The parties have stipulated that the entire file including documentary evidence be entered into the record.

FINDINGS OF FACT

1. Seakon, Inc., (hereinafter referred to as "Appellant"), is a general contractor whose principal

place of business is located in Kailua-Kona, Hawaii. Appellant is directly responsible for employees who laid foundation, poured slabs, put in steel, and did the carpentry work at the Country Club Villa job site located in Keauhou, Hawaii.

2. Appellant's Country Club Villa job site was first inspected on September 13, 1978 by Mr. David Hallstein, Occupational Safety and Health Compliance Officer (OSHCO) and as a result of said inspection Appellant was cited for violation of §223.2-3A, Occupational Safety and Health Standards, Rules and Regulations, State of Hawaii. Section 223.2-3A in pertinent part reads:

"Every open-sided floor or platform 4 feet or more above adjacent floor or ground level shall be guarded by a standard railing on all open sides, except where there is entrance to a ramp, stairway, or fixed ladder."

Said citation occurred because Appellant did not provide employees protection from falling from high places on the job site. Appellant's employees were exposed to:

- a) approximately an eighteen (18) to twenty-five (25) foot fall at the first phase central area, top floor;
- b) approximately a twenty-five (25) to thirty (30) foot fall from a sloped roof;
- c) approximately an eighteen (18) to twenty (20) foot fall at the second phase, northernmost unit, third floor, right side; and
- d) approximately a nine (9) foot fall from the deck to the floor, located at the first phase central area, top floor.

3. On January 9, 1979 Appellant's employees were exposed to the same hazards as on September 13, 1978.

Consequently a second inspection of the job site by Mr. David Hallstein resulted in Appellant being issued a citation for a repeated serious violation pursuant to §223.2-3A, Occupational Safety and Health Standards, Rules and Regulations. Also as part of said citation a proposed penalty was assessed in the amount of one thousand one hundred and twenty dollars (\$1,120.00). Appellant had consented to the inspection but prohibited Mr. David Hallstein, OSCHO from interviewing employees.

4. Appellant's expressed desire to contest the second citation and notification of proposed penalty was transmitted to the Board.

5. On May 16, 1979 Mr. David Hallstein testified that Appellant was issued the citations based on conditions existing at the job site on the dates of the inspections. Furthermore, Hallstein testified that Appellant's poor attitude toward compliance with Occupational Safety and Health laws as evidenced by his prior conduct was incorporated into Complainant's Exhibit "E", Proposed Penalty Worksheet.

#### CONCLUSIONS OF LAW

Based on the law in effect and the evidence presented, the Board concludes that:

1. Appellant violated §223.2-3A, Occupational Safety and Health Standards, Rules and Regulations, State of Hawaii, because the hazard at the job site can result in a serious or fatal injury to employees;
2. Appellant's second violation is a repeated serious violation; and

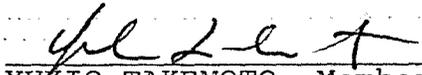
3. The proposed penalty of one thousand one hundred and twenty dollars (\$1,120.00) was arrived at appropriately and in accordance with established guidelines and criteria.

ORDER

Based on the foregoing findings of fact and conclusions of law, and in accordance with Chapter 396, Hawaii Revised Statutes, it is ordered that:

1. Appellant provide standard railing (guardrails) or equivalent protection (safety lines) where there are open-sided floor or platforms four (4) feet or more above the adjacent floor or ground level; and
2. Appellant pay to the Director of Labor and Industrial Relations, the sum of one thousand one hundred and twenty dollars (\$1,120.00).

Dated: Honolulu, Hawaii, JUN 14 1979.

  
YUKIO TAKEMOTO, Member

I CONCUR:

  
JAMES H. TAKUSHI, Member

I do hereby certify that the foregoing  
is a full, true and correct copy of  
the original on file in this office.

  
Carol Kanehira