

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

HAWAII PLASTERING & CONTRACTING) CASE NO. OSAB 79-2
CORPORATION, APPELLANT,)
)
v.)
) DECISION AND ORDER
Director, Department of Labor and)
Industrial Relations, Appellee.)
_____)

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DECISION AND ORDER

This occupational safety and health case came before the Labor and Industrial Relations Appeals Board on appeal by Hawaii Plastering & Contracting Corporation from a Citation and Notification of Proposed Penalty issued by the Director of Labor and Industrial Relations, State of Hawaii, dated February 13, 1979.

The two issues before the Board are:

1. Whether there were violations of §§205.1-1 and 330.2-1B, Occupational Safety and Health Standards, Rules and Regulations, State of Hawaii, and
2. Whether the proposed penalty for said alleged violations is appropriate.

FINDINGS OF FACT

1. Hawaii Plastering & Contracting Corporation, (hereinafter "Appellant"), is a general contractor whose principal place of business is located at 2844 Kaihikapu Street, Honolulu, Hawaii.
2. Appellant's 46-071 Alii Kane Place, Kaneohe, job site was first inspected on February 6, 1979, by Mr. Gregory Dikilato, Occupational Safety and Health

Compliance Officer (OSHCO) and as a result of said inspection Appellant was cited for violation of §§205.1-1 and 330.2-1B, Occupational Safety and Health Standards, Rules and Regulations, State of Hawaii.

Section 205.1-1 in pertinent part reads:

"Personnel protective clothing was not worn, i.e., employee working without a shirt: Building 13 on scaffold at east end.

Abatement Date: Within one day after receipt of citation."

Said violation was withdrawn by DOSH because the employee was not exposed to any hazardous substances.

Section 330.2-1B reads:

"Standard guardrails or equivalent protection were not installed on all open sides and ends of platforms more than four feet above the ground or floor (24 ft. drop): Building 13, units 4 and 5 east end.

Abatement Date: Within one day after receipt of citation."

An employee of Appellant was exposed to a fall of 24 feet without railings on the scaffold to protect him.

3. Appellant's expressed desire to contest the Citation and Notification of Proposed Penalty was transmitted to the Board on March 6, 1979.

4. On March 19, 1979, the Appeals Board issued a Notice of Pretrial Conference to the Appellant and Appellee.

5. On May 9, 1979, a pretrial conference was held at the Kendall Building, Suite 400, at 9:00 a.m. Both parties were present at this conference.

6. On September 17, 1979, the Appeals Board issued a Notice of Hearing to the above-captioned parties.

7. On October 16, 1979, the case came on for hearing before the Appeals Board in accord with the above-mentioned Notice of Hearing. Appellant did not appear.

CONCLUSIONS OF LAW

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

1. Appellant violated §330.2-1B, 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 did not violate §205.1-1, Occupational Safety and Health Standards, Rules and Regulations.

3. The proposed penalty of ONE HUNDRED AND FIVE DOLLARS (\$105.00) 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 assure that his employees use standard railing (guardrails) or equivalent protection (safety lines) where there are open-sided floors or platforms four feet or more above the adjacent floor or ground level; and

2. Appellant immediately pay to the Director of Labor and Industrial Relations, the sum of ONE HUNDRED AND FIVE DOLLARS (\$105.00).

DATED: Honolulu, Hawaii, NOV 14 1979.

E. JOHN McCONNELL
E. JOHN MCCONNELL, Chairman

I CONCUR:

YUKIO TAKEMOTO
YUKIO TAKEMOTO, Member

JAMES H. TAKUSHI
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.

Darlene Kuroki