

Case file

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of)	CASE NO. OSAB 81-13
)	(39-81)
LARRY MANZANO, JR.,)	
)	
Complainant,)	
)	
vs.)	
)	
ASSOCIATION OF OWNERS OF)	
FAIRWAY VILLA,)	
)	
Respondent,)	
)	
and)	
)	
DIRECTOR, DEPT. OF LABOR)	
AND INDUSTRIAL RELATIONS.)	

FILED
LIR APPEALS BOARD
STATE OF HAWAII

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DECISION AND ORDER

This occupational safety and health case is before the Board on a Notice of Contest filed by Complainant LARRY MANZANO, JR., pursuant to Section 396-11, Hawaii Revised Statutes. Claimant contests an order of the Director dated September 15, 1981 denying his complaint of discrimination against Respondent ASSOCIATION OF OWNERS OF FAIRWAY VILLA. The issue to be decided by this Board is whether Respondent discharged or discriminated against Complainant for exercising rights granted him by the Occupational Safety and Health Act, Chapter 396, Hawaii Revised Statutes.

FINDINGS OF FACT

1. Between approximately July of 1979 and April 8, 1981, Complainant LARRY MANZANO, JR. was employed

as a maintenance man by Respondent herein ASSOCIATION OF OWNERS OF FAIRWAY VILLA. Complainant's duties included maintaining the pool and restrooms and also the lobby and other common areas so that they would be clean and suitable for use by owners and tenants of the Fairway Villa Condominium.

2. Part of Complainant's duties included the use of chlorine in both tablet and granular form to purify the water in the condominium swimming pool. Complainant complained to Mr. Leroy Hoehn, the resident manager of the building, that the chlorine made him ill. Complainant requested and was furnished a respirator suitable for providing protection from chlorine vapor and dust. Complainant, however, did not use the respirator furnished by his employer and purchased one of his own.

3. Because of his complaints about the chlorine, Complainant was relieved of the pool maintenance duties at the condominium. Complainant thereafter was assigned to clean elevator tracks but complained that the product used for this purpose caused him to be ill. Complainant was thereafter assigned to sweep stairwells but complained that the dust caused him respiratory problems.

4. There is no requirement in the occupational safety and health regulations that persons handling chlorine granules and tablets utilize respirators. Occupational safety and health standards require the use of such devices when recommended on the label of the products being used. The label of the chlorine products used at the Fairway Villa Condominium contained no such recommendation.

5. Complainant's job performance at the Fairway Villa Condominium was unsatisfactory. Complainant failed to keep sufficient chemicals in the water of the swimming pool resulting in it becoming clouded. Complainant failed to keep the lobby, restrooms, and other common areas in a clean and suitable condition as required by his employer. Complainant was repeatedly counseled that his job performance was unsatisfactory.

6. On April 7, 1981, Complainant was terminated by the resident manager, Mr. Hoehn. Mr. Hoehn's reasons for termination of Complainant included poor performance, insubordination, and Complainant's refusal to turn in building keys when he was off duty.

7. On April 10, 1981, Complainant filed a discrimination complaint against the ASSOCIATION OF OWNERS OF FAIRWAY VILLA with the Division of Occupational Safety and Health of the Department of Labor and Industrial Relations. Complainant's complaint was investigated by Mrs. Ellen Kondo, an employee of the Department. Mrs. Kondo inspected the premises and found that chlorine was used at the swimming pool of the Fairway Villa Condominium in both tablet and granular form. Mrs. Kondo found that the chlorine was dry and that the tablets were wrapped in plastic packages. She inspected the label of the chlorine products and found no requirement that a respirator be utilized. Mrs. Kondo found no violation of the occupational safety and health standards of her division.

CONCLUSIONS OF LAW

1. Respondent herein ASSOCIATION OF OWNERS OF FAIRWAY VILLA Condominium did not violate any occupational safety and health standard adopted pursuant to Chapter 396, Hawaii Revised Statutes, as alleged by Complainant herein LARRY MANZANO, JR.

2. Complainant LARRY MANZANO, JR. was terminated from his employment by Respondent ASSOCIATION OF OWNERS OF FAIRWAY VILLA Condominium for reasons other than the exercise of any rights afforded him by Chapter 396, Hawaii Revised Statutes.

3. Respondent ASSOCIATION OF OWNERS OF FAIRWAY VILLA Condominium did not discriminate against Complainant LARRY MANZANO, JR. in violation of Chapter 396, Hawaii Revised Statutes.

ORDER

The order of the Administrator of the Division of Occupational Safety and Health dated September 15, 1981 is affirmed.

Dated: Honolulu, Hawaii, MAY 24 1983


E. JOHN McCONNELL, Chairman


YUKIO TAKEMOTO, Member


EDUARDO E. MALAPIT, Member

