

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

|                               |   |                          |
|-------------------------------|---|--------------------------|
| In the Matter of              | ) | CASE NO. OSAB 97-004(WH) |
| DIRECTOR, DEPARTMENT OF LABOR | ) | (OSHCO No. N1662)        |
| AND INDUSTRIAL RELATIONS,     | ) | (Report No. 301421988)   |
| Complainant,                  | ) |                          |
|                               | ) |                          |
| vs.                           | ) |                          |
|                               | ) |                          |
| WJC HAWAII, INC.,             | ) |                          |
| Respondent.                   | ) |                          |

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 DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

DECISION AND ORDER

This Occupational Safety and Health case is before the Board on a written Notice of Contest by WJC HAWAII, INC. ("Respondent") from a Citation and Notification of Penalty dated February 5, 1997, issued by the DIRECTOR OF LABOR AND INDUSTRIAL RELATIONS, via its Division of Occupational Safety and Health ("Complainant").

On October 9, 1997, Complainant moved to dismiss the Notice of Contest for lack of prosecution.

FINDINGS OF FACT

1. Respondent was cited by Complainant for certain violations of the Hawaii Occupational Safety and Health Standards.

2. On February 25, 1997, Respondent, via its representative, timely filed a Notice of Contest to contest the citations.

3. An initial conference was scheduled on June 16, 1997, at 10:30 a.m. By letter dated June 9, 1997, Respondent requested a sixty day continuance of the initial conference.



Complainant received a copy of the letter on June 16, 1997, the day of the scheduled initial conference.

4. The Board granted Respondent's request and rescheduled the initial conference to September 8, 1997 at 10:30 a.m.

5. Counsel for Complainant appeared at the September 8, 1997 initial conference, and waited until 11:00 a.m. Respondent did not appear. The Board's representative was unable to contact Respondent at the telephone number that it had provided to the Board.

6. Respondent telephoned the Board at 11:05 a.m. on September 8, 1997, again requesting a continuance.

7. The Board rescheduled the initial conference to October 9, 1997, at 8:30 a.m. Respondent was ordered to initiate the telephone conference call to the Board at the scheduled date and time. Respondent did not call at the scheduled time. Counsel for Complainant appeared at the Board and waited until 8:45 a.m., at which time she had to leave for another matter.

8. By letter dated October 9, 1997, Complainant requested a dismissal of the Notice of Contest for lack of prosecution.

9. By Order dated October 13, 1997, the Board ordered Respondent to show cause as to why its Notice of Contest should not be dismissed. A hearing on the Order to Show Cause was scheduled on October 30, 1997, at 10:15 a.m. The Board advised

Respondent that it would initiate the conference call to Respondent for the Order to Show Cause hearing.

10. On October 30, 1997, at 10:15 a.m., counsel for Complainant appeared for the Order to Show Cause hearing. The Board called Respondent at 10:21 a.m., but was unable to reach its representative. The Board left a message on Respondent's answering machine that it would be proceeding with the hearing.

11. On this record, we find that Respondent has failed to prosecute its case.

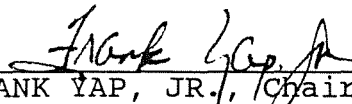
#### CONCLUSIONS OF LAW


We conclude that Respondent's Notice of Contest shall be dismissed for lack of prosecution.

#### ORDER

Respondent's Notice of Contest of the Citations and Notifications of Penalty, issued on February 5, 1997, is hereby dismissed.

Dated: Honolulu, Hawaii, NOV 04 1997.

  
FRANK YAP, JR., Chairman


  
CAROL K. YAMAMOTO, Member

*Excused*  
VICENTE F. AQUINO, Member

Robyn M. Kuwabe, Esq.,  
for Complainant

F. Michael Singer  
for Respondent

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