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Transaction ID 58472972
Case No. OSH 2015-19

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of)	
)	CASE NO. OSH 2015-19
DIRECTOR, DEPARTMENT OF LABOR)	
AND INDUSTRIAL RELATIONS)	ORDER NO. 746
)	
Complainant,)	ORDER GRANTING COMPLAINANT
)	DIRECTOR OF LABOR AND
vs.)	INDUSTRIAL RELATIONS' MOTION
)	FOR SANCTIONS FILED NOVEMBER
ANDREW THOMAS,)	3, 2015, AND DISMISSING CONTEST
)	
Respondent.)	
)	
)	

ORDER GRANTING COMPLAINANT DIRECTOR
OF LABOR AND INDUSTRIAL RELATIONS' MOTION FOR
SANCTIONS FILED NOVEMBER 3, 2015, AND DISMISSING CONTEST

On January 13, 2016, the Hawaii Labor Relations Board (Board) convened a motion hearing in this matter pursuant to the Board's Notice of Hearing on Director's Motion for Sanctions Filed November 3, 2015, dated December 21, 2015. Deputy Attorney General J. Gerard Lam appeared for Complainant DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS (Director). Respondent ANDREW THOMAS (Thomas or Respondent) failed to appear for the scheduled proceeding.

Based upon the record, the Board makes the following findings of fact, conclusions of law, and order granting Director's Motion for Sanctions and dismissing Thomas' Contest.

FINDINGS OF FACT

If it should be determined that any of these Findings of Fact should have been set forth as Conclusions of Law, then they shall be deemed as such.

1. On May 22, 2015, the Director, through the Hawaii Department of Labor and Industrial Relations' Occupational Safety and Health Division (HIOSH), issued a Citation and Notification of Penalty to Thomas (Inspection number 1057775) for four protective equipment and fall protection violations on inspection date April 17, 2015. HIOSH characterized the violations of 29 CFR 1926.100(a), 29 CFR 1926.501(b)(1), 29 CFR 1926.502(b)(2)(i) and 29 CFR 1926.1053(b)(1) as "Serious" and imposed a Penalty of \$7,300.00.

2. By letter dated June 12, 2015, Thomas filed a contest of the May 22, 2015 Citation and Notification of Penalty with HIOSH, which was received by HIOSH on June 17, 2015.
3. On July 17, 2015, the Director filed the Notice of Contest dated July 10, 2015 with the Board.
4. On August 18, 2015, the Board held an initial conference in this matter attended by the Director's counsel, J. Gerard Lam, Deputy Attorney General, and Thomas, Respondent's owner and representative. By Order No. 679 entitled Pretrial Order issued on August 18, 2015, the Board established discovery deadlines and the trial date of December 17, 2015.
5. On August 20, 2015, the Director filed and served Thomas with a Request for Answers to Interrogatories, and a Request for Production of Documents (discovery requests). Thomas' responses were due on September 21, 2015, pursuant to Rules 7, 33(b)(3) and 34(b) of the Hawaii Rules of Civil Procedure.
6. On September 29, 2015, the Director filed a Motion to Compel Respondent to answer the Director's discovery requests and to continue all pending discovery deadlines by at least two months to allow the Director time to conduct discovery and prepare for trial. In paragraphs 5 and 6 of the Declaration of J. Gerard Lam attached to the Director's Motion to Compel, Lam stated:
 5. On September 22, 2015, the Director's attorney sent a letter to Respondent asking that it respond to the Director's Discovery Requests on or before September 28, 2015.
 6. To date, Respondent has not responded to the Director's Discovery Requests thus necessitating the Director's present Motion, which should be granted.
7. On October 9, 2015, the Board issued Order No. 703 entitled Order Granting Director, Department of Labor and Industrial Relations' Motion to Compel Discovery from Respondent Andrew Thomas; Notice of Continued Discovery Deadlines (hereinafter "Order Granting Motion to Compel Discovery"). Thomas was allowed fourteen days to answer the Director's discovery requests, discovery deadlines were continued for two months and trial was reset to February 17, 2016.
8. On November 3, 2015, the Director filed a Motion for Sanctions, asking the Board to grant the motion by dismissing this case, because Thomas has not complied with Order No. 703.
9. On December 21, 2015, the Board issued a Notice of Hearing on Director's Motion for Sanctions filed November 3, 2015 (Notice) setting a hearing date for the motion on

January 13, 2016 at 9:00 a.m. The Notice, mailed to Thomas by first class mail more than fifteen days before the hearing, was not returned to the Board.

10. On January 13, 2015, the Board convened the hearing on the Director's November 3, 2015 Motion at approximately 9:00 a.m. Director's counsel, Deputy Attorney General J. Gerard Lam, appeared before the Board, and Respondent's representative did not appear. The Board noted Thomas' non-appearance for the record; no calls were received by the Board's staff from Thomas regarding his nonappearance, and there was no answer when the Board's staff attempted to reach Thomas by telephone (at the telephone number of record in the Board's file).

CONCLUSIONS OF LAW

If it should be determined that any of these Conclusions of Law should have been set forth as Findings of Fact, then they shall be deemed as such.

1. The Board has jurisdiction over the instant contest pursuant to Hawaii Revised Statutes (HRS) §§ 396-3, 396-11, and 396-11.5.
2. Pursuant to the Hawaii Rules of Civil Procedure, under Rule 37(b)(2)(C), for a party's failure to provide or permit discovery, sanctions may be ordered, and may include dismissing the action or proceeding, or rendering a judgment by default against the disobedient party.
3. In the instant case, the Board's records indicate that Thomas has not complied with Order No. 703 Granting Director's Motion to Compel Discovery and, in addition, failed to appear at the January 13, 2016 Board hearing on the Director's Motion for Sanctions.
4. The board thus concludes that sanctions are in order, and, by ignoring the Board's Order and by failing to appear at the scheduled Motion hearing on January 13, 2016, that Thomas has abandoned his position of contesting the Citation and Notification of Penalty issued by HIOSH on May 22, 2015 before this Board.

Accordingly, the Director's November 3, 2015 Motion for Sanctions is granted.

ORDER

Based on the foregoing, this Contest is hereby dismissed, and this instant case is closed; provided, however, that such dismissal and closure may be set aside and this Contest reinstated by order of the Board for good cause shown upon motion duly filed not later than ten (10) days from the date of this order of dismissal and closure of this Contest.

DLIR v. ANDREW THOMAS

CASE NO. OSH 2015-19

ORDER GRANTING COMPLAINANT DIRECTOR OF LABOR AND INDUSTRIAL
RELATIONS' MOTION FOR SANCTIONS FILED NOVEMBER 3, 2015, AND
DISMISSING CONTEST

ORDER NO. 746

DATED: Honolulu, Hawaii, January 25, 2016.

HAWAII LABOR RELATIONS BOARD



KERRY M. KOMATSUBARA, Chair

SESNITA A.D. MOEPONO, Member

ROCK B. LEY, MEMBER

Copies sent to:

Andrew Thomas

J. Gerard Lam, Deputy Attorney General