

ALASKA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD  
P.O. BOX 21149  
JUNEAU, ALASKA 99802

STATE OF ALASKA, )  
DEPARTMENT OF LABOR, )  
 )  
Complainant, )  
 )  
v. )  
 )  
STEEL FABRICATORS, INC., )  
 )  
Contestant. )

Docket No. 89-782  
Inspection No. KU-9353-526-88

DECISION AND ORDER

This matter arises from safety and health citations issued by the State of Alaska, Department of Labor ("Department") to Steel Fabricators, Inc. ("Contestant") following an inspection of Contestant's workplace at 2132 Railroad Avenue in Anchorage on November 30, 1988. The Department's citations allege 14 separate violations of safety and health codes and carry proposed mandatory penalties totalling \$2440.

After Contestant notified the Department of its desire to contest the citations, a hearing was held before the Board on November 21, 1989. The Department was represented by Assistant Attorney General Lisa Fitzpatrick. Contestant was represented by its president, Richard Faulkner. Evidence was taken in the form of witness testimony and documentary exhibits. The record was deemed closed at the conclusion of the hearing.

At the hearing, Steel Fabricators withdrew its contest of the alleged code violations and indicated that it wished to contest only the monetary penalties. Accordingly, the Board considered only those alleged violations carrying a proposed monetary penalty; the remaining alleged violations are deemed to be affirmed as cited.

#### FINDINGS OF FACT

1. On November 30, 1988, Department compliance officer Richard Kukowski was dispatched to conduct an accident inspection of Contestant's workplace at 2132 Railroad Avenue in Anchorage, Alaska.

2. The inspection was prompted by an accident involving one of Contestant's employees, Bob Seymour. Seymour had been operating an electric crane hoist to lift a steel "I" beam. When the scissor tongs connected to the hoist failed to adequately grip the steel beam, it fell on his foot, causing serious and permanent injury.

3. After examining the crane hoist, compliance officer Kukowski determined that the accident had occurred because a smaller shackle had been substituted for the shackle normally used on the crane assembly. The smaller shackle prevented the scissor tongs from properly gripping the steel beam, causing it to fall. Kukowski also determined that the blades of the scissor tongs were themselves bent, further limiting the ability of the

tongs to adequately grip the steel beam. (See Department Exhibits A, B and C.)

4. In the course of his comprehensive inspection, Kukowski documented a number of safety and health code violations, some of which were directly related to the accident and some which were unrelated. (See Department's Citations.)

5. Following the guidelines in the Department's compliance manual, Kukowski classified each of the alleged violations as either "serious" or "other" (non-serious) violations. He also calculated proposed penalties for each violation, based on such factors as probability of injury, severity of injury, stress factors, and proximity/exposure of employees to the various hazardous conditions.

6. Under the Department's penalty calculation guidelines, once an initial penalty has been calculated, several adjustment factors may be applied to reduce the final proposed penalty. Adjustment factors include company size, history of previous violations, and good faith in preventing and correcting safety violations.

7. Except for Citation 1, the initial proposed penalty for each citation was reduced by 60% as follows: 30% for company size, 20% for good faith and 10% for no history of recent safety violations. The \$1000 penalty for Citation 1 was not given any reduction since this violation was directly related to and responsible for the accident.

8. Contestant corrected all of the cited violations within 7 days after notification of the violations. At the hearing, Contestant questioned compliance officer Kukowski and presented several arguments for further reducing the proposed penalties but did not present any evidence or witnesses of its own.

#### CONCLUSIONS OF LAW

Contestant does not dispute the existence of the cited code violations or the fact that its employees were exposed to the hazardous conditions created. Therefore, we affirm each alleged violation as cited.

Contestant does challenge, however, the amount of the monetary penalties totalling \$2,440. Contestant argues that these should be reduced or eliminated for the following mitigating reasons: Contestant's present ownership only took control of the company 4-5 months prior to the accident and was just getting started on the development of its safety program; Contestant corrected all of the cited violations within 7 days of the inspection; Contestant was not aware of some of the code violations; Contestant cannot afford a full-time safety person for a company with only 12 employees; and Contestant should be permitted to spend the penalty amounts on correcting the safety violations rather than paying fines to the Department.

We find little merit in Contestant's arguments. Contestant's claimed lack of awareness of the various code

violations is hardly a valid defense to these citations; if it had examined its own workplace more thoroughly, as well as the applicable safety codes, it would have easily recognized the various code violations. Nor is the fact that new management may have taken over the company only a few months before the inspection a valid defense to the citations; the new owner has a separate and independent legal responsibility to ensure that a safe workplace is provided to its employees at all times.

Moreover, the fact that Contestant was able to correct all the cited violations within 7 days suggests that it had ample time prior to the inspection (and the accident) to take the necessary corrective action. In order to meet its safety obligations, Contestant could also have requested assistance from the Department's voluntary compliance section but did not do so. Furthermore, Alaska OSHA law (AS 18.60.095) provides that once "serious" violations have been documented, monetary penalties shall be assessed up to \$1000 for each violation; there is no authority for merely issuing a "warning" for serious violations in lieu of assessing a monetary penalty.<sup>1</sup>

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1. We note that the Department's guidelines for the classification of violations and the calculation of penalties are contained in the Department's compliance manual, a document which is relied upon regularly by the Department in enforcing safety and health violations but which has not been promulgated by regulation and therefore does not have the force and effect of law. We are concerned that the portions of the compliance manual relating to the classification of violations and the calculation of penalties have a direct impact on employers regulated by the Department and we believe that these guidelines should be given (continued...)

With respect to the penalty amounts, we find that Contestant... has already been given a significant reduction and that no further reductions are warranted. Once a company changes hands, there is no "free ride" for the new owner; each employer has an immediate responsibility to comply with applicable occupational safety and health requirements. Finally, as much as we might like to see Contestant spend the penalty amounts on correcting the safety violations, we are not free to ignore the clear mandate of Alaska's OSHA law which directs that monetary penalties shall be imposed for significant safety and health violations.

For the foregoing reasons, we decline to reduce the penalty amounts any further and affirm the Department's penalties proposed.

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1(...continued)  
the full force and effect of law through the promulgation of appropriate regulations. See AS 44.62.640(a)(2); Kenai Peninsula Fisherman's Coop. Ass'n v. State, 628 P.2d 897 (Alaska 1981).

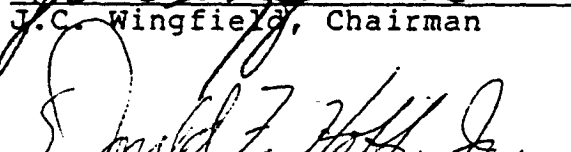
ORDER

1. The citations and penalties issued to Steel Fabricators, Inc. are AFFIRMED as cited.

DATED this 8<sup>th</sup> day of March, 1990.

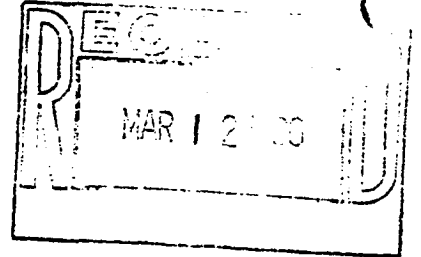
ALASKA OCCUPATIONAL SAFETY  
AND HEALTH REVIEW BOARD

  
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**OCCUPATIONAL SAFETY & HEALTH REVIEW BOARD**  
**P.O. BOX 21149**  
**JUNEAU, ALASKA 99802-1149**



**NOTICE TO ALL PARTIES**

A person affected by an Order of the OSH Review Board may obtain review of the Order by filing a Notice of Appeal in Superior Court as provided by the Rules of Appellate Procedure of the State of Alaska. The Notice of Appeal must be filed within 30 days from the date of the issuance of the Order by the OSH Review Board. After 30 days from the date of the issuance of the Order, if no appeal has been filed, the Order becomes final and is not subject to review by any court. AS 18.60.097.

**CERTIFICATION**

I hereby certify that the foregoing is a full, true and correct copy of the Decision and Order in the matter of the Department of Labor vs. Steel Fabricators, Inc., Docket No. 89-782, filed in the office of the OSH Review Board at Juneau, Alaska, this 8th day of March, 1990.

Mary Jean Smith  
Administrative Assistant  
OSH Review Board