

STATE OF ALASKA

DEPARTMENT OF LABOR

OCCUPATIONAL SAFETY & HEALTH REVIEW BOARD

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STATE OF ALASKA,)
DEPARTMENT OF LABOR,)
Complainant,)
v.)
ROGER LONGLEY BUILDERS, INC.,)
Contestant.)

Docket No. 91-910
Inspection No. 01-0120-083-91

RECEIVED
JUL 20 1992
Law Offices of Robert W. Landau

DECISION AND ORDER

This matter arises from an occupational safety and health inspection by the State of Alaska, Department of Labor (Department) of a worksite under the control of Roger Longley Builders, Inc. (Longley) in Ketchikan, Alaska, on September 4, 1991.

As a result of the inspection, the Department issued five citations alleging violations of Alaska occupational safety and health codes. Longley contested Citations 1, 2, 3, and 4. Prior to the hearing, the Department moved to amend the contested citations to change the code provisions cited and the monetary penalties assessed. The Department's motion, unopposed by Longley, was granted.

The contested citations, as amended, are as follows: Citation 1 alleges a violation of Construction Code 05.120(b)(5)(J) for allowing two employees to work on a scaffold approximately 18 feet off the ground without adequate guardrails or equivalent protection. The violation was classified as a "serious repeat" and a penalty of \$1,200 was assessed. Citation 2 alleges a violation of Construction Code 05.090(a)(2)(A) for failing to equip a table saw with a blade guard. The violation was classified as "serious" and a penalty of \$600 was assessed. Citation 3 alleges a violation of Construction Code 05.110(e)(2)(A)(i) for failure to use ground fault circuit interrupters or equivalent protection to protect employees from electrical hazards. The violation was classified as a "repeat" and a penalty of \$120 was assessed. Citation 4 alleges a violation of Construction Code 05.120(b)(1)(K) for failing to fully plank the scaffolding in use. The violation was classified as a "serious repeat" and a penalty of \$1,200 was assessed.

A hearing was held before the full Board in Ketchikan on March 11, 1992. The Department was represented by Assistant Attorney General Lisa M. Fitzpatrick. There was no appearance for Longley. The Department presented witness testimony and documentary evidence in support of its citations. Upon review and consideration of the evidence submitted, the Board makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. On September 4, 1991, Department compliance officer Phil Oldring conducted an occupational safety and health inspection of a construction project located on Stedman Street in Ketchikan, Alaska.

2. Oldring determined that Longley was the general contractor on the job, which involved the remodeling of a commercial store.

3. At the time of the inspection, Longley had three employees at the worksite.

4. Oldring observed two of Longley's employees working on a scaffold approximately 18 feet off the ground. The scaffold did not have any guardrails at the level where the employees were working. (Ex A.)

5. Oldring also observed that the scaffolding in use only had only single planking and was not fully planked as required by the Construction Code. (Ex A.)

6. After a previous inspection on July 24, 1989, at 421 Dock Street in Ketchikan, Longley had been cited for the same code violations regarding guardrails and planking alleged in Citations 1 and 4 herein. The prior citations had become final as a result of a settlement agreement approved by the Board on May 24, 1990. (Ex B.)

7. Citations 1 and 4 were each classified as "serious repeat" violations because of the potential for serious injury or

death in the event an employee were to fall from the inadequately-protected scaffold.

8. Under the Department's penalty calculation guidelines, the unadjusted penalty for a serious repeat violation is \$2,000. No penalty reduction was given for good faith or history due to the prior violations. However, because of Longley's small company size, it was given a 40% penalty reduction, resulting in penalty assessments of \$1,200 each for Citations 1 and 4. (See Affidavit of Dennis L. Smythe attached to Department's Motion to Amend Citations.)

9. During the inspection, Oldring also observed a table saw without a blade guard. When questioned by Oldring, Longley's employees at the site admitted using the saw but that there was no guard for the blade at the worksite.

10. The table saw violation was classified as "serious" because of the potential for amputation of a finger in the event of an accident with the unguarded blade.

11. Under the Department's penalty calculation guidelines, the unadjusted penalty for a serious violation is \$1,000. Longley was given the maximum 40% size reduction, resulting in a final penalty of \$600.

12. Oldring also noticed that Longley's employees were using tools plugged into a temporary electrical service without a ground fault circuit interrupter (GFCI) or an assured equipment grounding program. There was a GFCI at the site but it was not in use.

13. Longley had previously been cited for failing to use ground fault circuit interrupters as a result of an inspection on January 16, 1990. The previous violation was never contested and became final by operation of law. (Ex. C.)

14. The GFCI violation was classified as a "repeat" violation because the employer had been cited for the same code violation within the preceding three years and the earlier violation had become final.

15. The unadjusted penalty for Citation 3 was \$200. Longley was given a 40% reduction for company size, resulting in a final penalty assessment of \$120.

16. The Board's hearing notice in this matter was mailed by certified mail to Longley at its address of record on or about January 17, 1992.

17. On or about February 14, 1992, the hearing notice was returned to the Department as unclaimed.

18. Prior to the hearing, the Board's staff attempted to contact Longley at its last known business address but there was no telephone listing either for the company, its president or any of the three employees who were at the worksite on the day of the inspection.

19. Upon investigation, compliance officer Oldring was informed that Longley's business had closed and all of the principals had left Ketchikan.

CONCLUSIONS OF LAW

A. Failure To Appear

Longley failed to appear at the scheduled hearing in Ketchikan on March 11, 1992. The record reflects that the Board's hearing notice was duly sent to Longley's business address and that additional attempts were made to contact both the company's president and its employees. The company's business has apparently closed down and its principals have left Ketchikan. Under these circumstances, the Department did everything that could reasonably be expected to notify Longley of the Board hearing. We find no basis to excuse Longley's failure to appear. Accordingly, we find Longley to be in default.

B. Merits Of The Citations

Upon review of the evidence submitted by the Department, we conclude that the Department has made out a prima facie case with respect to each of the citations in contest. There is substantial evidence to show that Longley was not in compliance with each of the code provisions cited and that one or more of its employees were exposed to the resulting hazards created.

We have also reviewed the Department's classification of each of the citations in contest and conclude that they are appropriate. Finally, we have reviewed the Department's penalty calculations for each citation and can find no reason to disturb the Department's assessments.

ORDER

Based on the foregoing findings of fact and conclusions of law, it is hereby ordered that the citations and penalties issued by the Department are AFFIRMED.

DATED this 17th day of July, 1992.

ALASKA OCCUPATIONAL SAFETY
AND HEALTH REVIEW BOARD

By: Wayne A. Gregory
Wayne A. Gregory, Chairman

By: Donald F. Hoff, Jr.
Donald F. Hoff, Jr., Member

By: Lawrence D. Weiss
Lawrence D. Weiss, Member

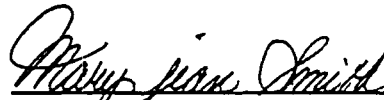
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NOTICE TO ALL PARTIES

A person affected by an Order of the OSH Review Board may obtain a review of the Order by filing a complaint challenging the Order in Superior Court. The affected person must file the complaint 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, the order becomes final and is not subject to review by any court. AS 18.60.097(a).

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Decision and Order in the matter of the Alaska Department of Labor vs. Roger Longley Builders, Docket No. 91-910, filed in the office of the OSH Review Board at Juneau, Alaska, this 17th day of July, 1992.



Mary Jean Smith
OSH Review Board

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