

SENT BY REGISTERED MAIL TO EMPLOYEE AND EMPLOYER

August 6, 2014

Mr. Adrian Tican

Mr. Adrian Tican:

RE: ADRIAN TICAN complaint of unsafe conditions against Earl's West Hills Ltd.

The questionnaire you submitted to Occupational Health and Safety regarding your complaint of unsafe conditions that existed in June 2007 at Earl's West Hills Ltd. has been reviewed. Occupational Health and Safety has conducted an investigation and did not find any information or record related to your complaint of unsafe conditions at Earl's West Hills Ltd.

In order to support your disciplinary action complaint, the following three elements must be met:

- Evidence that the worker was acting in compliance with the Act, Regulation, or Code; and
- Evidence that disciplinary action was taken against the worker; and
- Evidence that disciplinary action was taken because of the act of compliance.

As there was no evidence found, your disciplinary action complaint against Earl's West Hills Ltd. could not be substantiated. Occupational Health and Safety will not conduct any further investigation and the file related to your complaint has now been closed.

Should you wish to appeal this decision, you may request a review of the matter by the Occupational Health and Safety Council under section 37(3) of the OHS Act by serving a notice of appeal on a Director of Inspection Programs within 30 days from the date of receipt of this report. In order to commence the process, a notice of appeal must be served on Derek Kearney, Acting Regional Director of Inspection Programs, South Region, Occupational Health and Safety, 600, 727 - 7th Avenue SW, Calgary, Alberta T2P 0Z5.

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Best Regards,

**Gurdip Sanghera, P.Eng., CIH, ROH
Occupational Health and Safety Officer
Jobs, Skills, Training and Labour
Tel 403-592-3236**

Enc. Appeal Package

**CC: Mr. Brian Wilson, Earl's West Hills Ltd.
Derek Kearney, Acting Director Inspections Program South
Chuck Samphire, Manager**

**OCCUPATIONAL HEALTH AND SAFETY
INVESTIGATIONS UNIT**

DOCUMENTS RECEIVED COVER SHEET

RECEIVED FROM:

(Name of sender or company Rep-
never courier company)

ADRIAN TICAN

RECEIVED BY:

(i.e. fax, courier, hand-delivered)

FAX

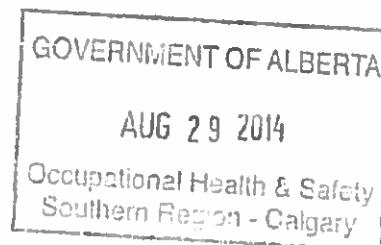
RECEIVED BY:

(name of receiver)

IRLS

RECEIVED ON:

(type in date or date stamp)



AFFIDAVIT

CANADA
PROVINCE OF ALBERTA
TO WIT:

IN THE MATTER OF ADRIAN TICAN v.s
EARL'S WEST HILLS LTD.

I, ADRIAN TICAN _____, of the City of Calgary, in the
Province of Alberta, make oath and say that:

I, ADRIAN TICAN, am a resident of Calgary, Alberta and I verily believe
that all information contained within EXHIBIT "A" and its supporting
materials is true to the best of my knowledge and belief.

ADRIAN TICAN

Sworn (or Affirmed) before me at the City of Calgary
in the Province of Alberta this 28 day
of AUGUST, A.D., 2004

Melissa L. LeBlanc
A Commissioner for Oaths
and for the Province of Alberta
My Commission Expires February 19, 2016

Occupational Health and Safety Council

NOTICE OF APPEAL

All parts of this form must be properly completed for the appeal to be registered. Before completing this form, you are strongly advised to read the *Rules of Procedure* of the Occupational Health and Safety Council (available at <http://work.alberta.ca/occupational-health-safety/6446.html>).

APPELLANT (please print)		
Name <i>ADRIAN TICAN</i>		
Address		
City and Postal Code		Valid Email
Home Phone	Business Phone	Fax
RESPONDENT (please print)		
Name (Company and Responsible Individual) <i>EARL'S WEST HILLS LTD.</i>		
Address <i>140 Stewart Green S.W., Calgary, A.B. T3H 1M</i>		
City and Postal Code <i>Calgary T3H 3C8</i>		Valid Email
Home Phone <i>403 246 7171</i>	Business Phone <i>403 246 7171</i>	Fax <i>(403)246-7547</i>

Please return this Notice of Appeal, signed and dated to:

Director of Inspection
Alberta Jobs, Skills, Training and Labour
6th Floor, 727-7th Avenue SW
Calgary, Alberta T2P 0Z9

OR

Director of Inspection
Alberta Jobs, Skills, Training and Labour
10th Floor, Capital Health Centre, South Tower
10030-107 Street, Edmonton, Alberta T5J 3E4

What are you appealing? (Please check one. Complete a separate Notice of Appeal for each matter being appealed.)

- Order of an Officer (*section 16 of the OHS Act*)
- Administrative Penalty (*section 16 of the OHS Act*)
- Cancellation/Suspension of License or Permit (*section 16 of the OHS Act*)
- Ruling from an Imminent Danger Complaint Investigation (*section 35 of the OHS Act*)
- Ruling from a Disciplinary Action Complaint Investigation (*section 37 of the OHS Act*)

APPEAL FORMAT

Do you request an oral hearing OR an appeal by written submissions?

- Written submissions only (no opportunity to cross-examine witnesses)
- Face to-face, in-person oral hearing (may increase costs and time to final appeal decision)

If you request an oral hearing, do you or any of your witnesses, require...

- special accommodation for access to buildings. Explain please.
- services of a language or sign interpreter. Explain please.

I certify that the information provided in this Notice of Appeal is true and accurate to the best of my knowledge.

Signature ADRIAN TICAN
Occupational Health and Safety Council
Notice of Appeal

Date

August 23rd, 2014

March 2014
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1. List the specific reasons or grounds for this appeal.

Please see attached SCHEDULE "A".

2. Do you have any relevant evidence, information or documentation that was not shared with the OHS officer, and which you would like Council to consider in your appeal? If so, please send one hard copy of this new evidence to the Respondent and four copies to the OHS Council Secretary as soon as possible. In the space below, please state how this new evidence is relevant to your appeal and why, with ordinary diligence, it could not have been shared with the OHS officer(s) in the original investigation.

Please see attached "SCHEDULE A".

3. If you request an oral hearing, will you be calling any witness(es) at the hearing? If so, provide name(s) and their role(s), along with a concise "will say" summary of their anticipated evidence.

Please see attached SCHEDULE "A"

GLEN EDWARDS - witnesses safety concerns were raised and entered into

BRIAN WILSON - a contractual agreement with me on May 29, 2009 pertaining

TERRY ? -> called me on May 29th, 2009 and confirmed above

Miko ? = witness to the retaliatory events

the unlawful
dismissal
contractual
agreement.

4. If you request an oral hearing, what is your estimate of the length of time you will require to put in your case at the oral hearing?

2 hours (approx.)

5. Please indicate what relief you are seeking from this appeal.

If you are appealing an OHS officer's Order, Suspension or Cancellation:

- Revoke the Order, Suspension or Cancellation
- Vary the Order, Suspension or Cancellation

If you are appealing an OHS Administrative Penalty:

- Revoke the Administrative Penalty
- Vary the Administrative Penalty

If you are appealing a ruling from an Imminent Danger Complaint Investigation (note your request for a review may be dismissed for reasons set out in paragraph V(h) of the Rules of Procedure):

- Require the Employer to eliminate the Imminent Danger

If you are appealing a Disciplinary Action Complaint Investigation (note your request for a review may be dismissed for reasons set out in paragraph V(h) of the Rules of Procedure):

- Reinstatement to your former employment under the same terms and conditions under which you were formerly employed.
- Cessation of disciplinary action.
- Payment of money up to the equivalent wages that you would have earned if you had not been dismissed or had not received disciplinary action.
- Removal of any reprimand or other reference to the matter from employment records

Please note: this document will be shared with other parties involved in this appeal. Final appeal decisions will be publicly posted on OHS Council's website.

Schedule "A"

General

1. The victim and complainant, Adrian Tican ("Mr. Tican", the "Complainant", or "I") is an individual presently residing within Calgary, Alberta.
2. The respondent, Earls West Hills Ltd. ("Earls" or the "Respondent") is a restaurant franchise presently operating within Calgary, Alberta.

The Facts

3. On or around May 2nd, 2007, Mr. Tican was hired by the Earls, and Mr. Tican's employment which was classified as a line cook included, among other duties, food preservation and preparation.
4. On or around June 2007 and while Mr. Tican was working in the back of the kitchen preparing food for customers, Mr. Tican noticed puddles in the back, near a wire that was connected to the radio that was plugged in and playing music. Upon Mr. Tican fearing an imminent danger, Mr. Tican immediately reported such concern to his superiors and management (the "Occupational Health and Safety Concern") due to the fact, there was not, at that point in time, an established Occupational health committee on site, or a union.
5. Shortly thereafter, Mr. Tican was notified, over the phone on or around June 10th, 2007, that as a result of having reported the above Occupational Health and Safety Concern, Mr. Tican's employment would cease with Earls. Further, Earls neglected to issue Mr. Tican owed monies, including outstanding tip amounts.

6. Other concerns, grounds and reasons exist which may be relayed verbally and/or *viva voce* evidence, at a later date, and Mr. Tican adopts all initial previous submissions within this appeal, and Mr. Tican further reserves and preserves his rights, including but not limited to add further evidence at a later date.

The Law

7. Existence of imminent danger

35(1) No worker shall

(a) carry out any work if, on reasonable and probable grounds, the worker believes that there exists an imminent danger to the health or safety of that worker,

(b) carry out any work if, on reasonable and probable grounds, the worker believes that it will cause to exist an imminent danger to the health or safety of that worker or another worker present at the work site, or

(c) operate any tool, appliance or equipment if, on reasonable and probable grounds, the worker believes that it will RSA 2000

Section 35 Chapter O-2

OCCUPATIONAL HEALTH AND SAFETY ACT

25) cause to exist an imminent danger to the health or safety of that worker or another worker present at the work site.

(2) In this section, "imminent danger" means in relation to any occupation

(a) a danger that is not normal for that occupation, or

(b) a danger under which a person engaged in that occupation would not normally carry out the person's work.

(3) A worker who

(a) refuses to carry out work, or

(b) refuses to operate a tool, appliance or equipment pursuant to subsection (1) shall, as soon as practicable, notify the worker's employer at the work site of the worker's refusal and the reason for the worker's refusal

(4) On being notified under subsection (3), the employer shall

(a) investigate and take action to eliminate the imminent danger,

(b) ensure that no worker is assigned to use or operate the tool, appliance or equipment or to perform the work for which a worker has made a notification under subsection

(3), unless

(i) the worker to be so assigned is not exposed to imminent danger, or

(ii) the imminent danger has been eliminated,

(c) prepare a written record of the worker's notification, the investigation and action taken, and

(d) give the worker who gave the notification a copy of the record described in clause

(c) (5) The employer may require a worker who has given notification under subsection (3) to remain at the work site and may assign the worker temporarily to other work assignments that the worker is reasonably capable of performing.

(6) A temporary assignment under subsection (5), if there is no loss in pay, is not disciplinary action for the purposes of section 36. RSA 2000

Section 36 Chapter O-2

OCCUPATIONAL HEALTH AND SAFETY ACT

26(7) If a worker who receives a record under subsection (4)(d) is of the opinion that an imminent danger still exists, the worker may file a complaint with an officer.

(8) An officer who receives a complaint under subsection (7) shall prepare a written record of the worker's complaint, the investigation and the action taken and shall give the worker and the employer a copy of the record.

(9) A worker or an employer who receives a record under subsection (8) may request a review of the matter by the Council by serving a notice of appeal on a Director of Inspection within 30 days from the date of receipt of the record.

(10) After considering the matter, the Council may by order

(a) dismiss the request for a review, or

(b) require the employer to eliminate the imminent danger.

(11) An appeal lies to the Court of Queen's Bench from an order of the Council on a question of law or a question of jurisdiction and on hearing the matter the Court may make any order, including the awarding of costs, that the Court considers proper.

(12) An appeal under subsection (11) shall be made by way of application within 30 days from the date that the order of the Council is served on the person appealing the order of the Council.

(13) The commencement of an appeal under subsection (11) does not operate as a stay of the order of the Council being appealed from except insofar as a judge of the Court of Queen's Bench so directs.

RSA 2000 cO-2 s35;2009 c53 s122

Where disciplinary action prohibited

36 No person shall dismiss or take any other disciplinary action against a worker by reason of that worker acting in compliance with this Act, the regulations, the adopted code or an order given under this Act, the regulations or the adopted code.

RSA 2000 cO-2 s36,2002 c31 s15; 2012 c7 s2

Disciplinary action complaint

37(1) A worker who has reasonable cause to believe that the worker has been dismissed or subjected to disciplinary action in contravention of section 31(5) or 36 may file a complaint with an officer.

(2) An officer who receives a complaint under subsection (1) shall prepare a written record of the worker's complaint, the investigation and the action taken and shall give the worker and the employer a copy of the record.

(3) A worker or an employer who receives a record under subsection (2) may request a review of the matter by the Council by serving a notice of appeal on a Director of Inspection within 30 days from the receipt of the record.

(4) After considering the matter, the Council may by order

(a) dismiss the request for a review, or

(b) require one or more of the following:

(i) reinstatement of the worker to the worker's former employment under the same terms and conditions under which the worker was formerly employed;

(ii) cessation of disciplinary action;

(iii) payment to the worker of money not more than the equivalent of wages that the worker would have earned if the worker had not been dismissed or had not received disciplinary action;

(iv) removal of any reprimand or other reference to the matter from the worker's employment records.

(5) If the worker has worked elsewhere while the dismissal or disciplinary action has been in effect, those wages earned elsewhere shall be deducted from the amount payable to the worker under subsection (4)(b)(iii).

(6) An appeal lies to the Court of Queen's Bench from an order of the Council on a question of law or a question of jurisdiction and on hearing the matter the Court

may make any order, including the awarding of costs, that the Court considers proper.

(7) An appeal under subsection (6) shall be made by way of application within 30 days from the date that the order of the Council is served on the person appealing the order of the Council.

(8) The commencement of an appeal under subsection (6) does not operate as a stay of the order of the Council being appealed from except insofar as a judge of the Court of Queen's Bench so directs.

RSA 2000 cO-2 s37;2009 c53 s122

Relief

WHEREFORE, MR. TICAN RESPECTFULLY SEEKS THE FOLLOWING RELIEF:

- a.) the same initial remedies sought within his initial pleadings;
- b.) an order for costs;
- c.) an order that the Respondent establish an Occupational Health and Safety Committee;
- d.) such further relief as the Complainant or counsel for the Complainant may advise and/or that the OHS Council may allow;

Adrian Tican

Secretary, Occupational Health and Safety Council
Jobs, Skills, Training and Labour
7th Floor, 10808 - 99 Avenue
Edmonton, Alberta T5K 0G5
Tel: 780-643-6316

via fax and mail

October 23rd, 2014

Dear Alberta Occupational Health and Safety Council ("Council"),

RE: Earls Westhills Ltd. D.A.C. Appeal to the Council

Further to the above captioned Disciplinary Action Complaint appeal filed with the Council in a timely pertaining Earls Westhills Ltd (the "Complaint Appeal"), please be advised that I am withdrawing such Complaint Appeal due to, among other reasons, the fact that such Complaint Appeal and its contents has been or will be resolved in another forum. Also, please note that my previous email addresses of _____ and _____ are no longer functioning, as substantiated by bounce back messages, and I have not been able to gain access to such accounts and receive or send emails from and to such email accounts, and I communicate such to the Council in case the Council may have attempted to contact me via email pertaining any other ongoing or previous legal matters. Please know that the new email address that I am using is _____, should the Council wish to communicate with me. Also, please know and note that I have recently relocated and have a new address. Please advise me if you wish me to relay to you my new address. Thank you kindly for your time, understanding, consideration and cooperation.

Kind Regards,

Adrian Tican