

Occupational Health and Safety Council

Appeal of Administrative Penalty

Sohal Contracting Ltd.

Appellant

and

Alberta (OHS)

Respondent

ORDER

Panel: Peter Bowal (Chair), Nina Novak and Rob Munro

Appeal Decision: July 28, 2017

 Alberta Labour
Occupational Health and Safety Council

I. Nature of this Appeal

[1] On March 9, 2017, an Occupational Health and Safety manager representing the Respondent (“OHS”), pursuant to its regulatory authority, issued an Administrative Penalty against the Appellant, Sohal Contracting Ltd. (“Sohal”). This Administrative Penalty, in the amount of \$10,000, is in respect of eight contraventions (including four Stop Work Orders) between July 10, 2015 and November 18, 2016 of the *Occupational Health and Safety Code* (“Code”).

[2] On April 13, 2017, Sohal appealed the Administrative Penalty to the Occupational Health and Safety Council (“Council”). This appeal is made under the authority of the *Occupational Health and Safety Act*, R.S.A. 2000, c. O-2, section 16(1) (“the Act”). Sohal asks Council to revoke the Administrative Penalty. At the Appellant’s request, this appeal was conducted by way of written submissions without an oral hearing.

II. Summary of Decision

[3] For the reasons which follow, Council confirms the Administrative Penalty under section 16 (3) (b) of the *Act*.

III. Documents Reviewed

[4] Council reviewed and considered the following written submissions received from the Appellant and Respondent:

- (a) the Notice of Appeal submitted by Sohal on April 13, 2017; and
- (b) the OHS letter (its written submission) dated April 26, 2017.

[5] The Appellant was given an opportunity to file a Reply until June 5, 2017, but none was received.

IV. Jurisdiction and Applicable Law

[6] Section 40.3 of the *Act* governs, along with the *Administrative Penalty Regulation*, Alta Reg 165/2013 which sets out further requirements for Administrative Penalties under this legislation.

V. Position of Sohal

[7] The Appellant repeatedly states that it takes the health and safety of its employees seriously:

“we commit to continue to review and improve our health and safety program . . . We are working towards obtaining SECOR certification and continue to develop a health and safety manual. We have taken immediate action to comply with health and safety rules.

We are implementing policies to enforce safe work practices. . . . We are working on implementing safe work practices to eliminate any potential risk.

As we are a small company . . . with limited resources, we are requesting you to consider eliminating the fine, as this will cause financial hardship for the company. We want to reassure you that Health and Safety is at the forefront and we will continue to improve upon it.

[8] The Appellant attached several certificates of completion of various courses. These certificates appear to be in relation to two individuals (presumably employees) who have passed courses, such as first aid, or programs such as the Construction Safety Training System.

VI. Position of OHS

[9] OHS takes the position that the Appellant has raised no valid ground of appeal. In its Notice of Appeal, Sohal appealed on the ground of financial hardship. OHS does not consider financial hardship when determining the amount of an Administrative Penalty. Rather, OHS only considers the amount necessary within section 40.3(3) of the *Act* and its Administrative Penalty guidelines to deter non-compliance.

[10] There is no statutory authority for the Council to revoke or vary an administrative penalty based upon financial hardship. If the Administrative Penalty is properly issued by OHS, the Appellant’s inability to pay cannot be a proper basis for reducing or revoking it. Any inability to pay would be a matter of collection, rather than a review as to the reasonableness of the decision to levy the penalty.

VII. Council Analysis and Reasons for Decision

[11] Several of the Appellant’s submitted documents are not legible. None of the documents are self-explanatory as to their content. The Administrative Penalty was assessed on March 9, 2017. These course completions are dated June 14, 2014, May 19, 2016, March 26, 2017, April 5, 2017, and April 6, 2017. That is to say, all but two of these courses were taken *after* the Administrative Penalty was issued and *before* this appeal was filed. It is not obvious that this training would have taken place but for the issuance of the Administrative Penalty.

[12] While employee OHS training is to be encouraged, the Appellant fails to challenge the Administrative Penalty on any legal or factual basis. The Appellant now says it takes OHS seriously, the Administrative Penalty causes financial hardship, and some post-penalty training and accreditation has been achieved. None of these factors would affect the OHS manager's judgment to issue this Administrative Penalty when it was done. These three points raised by the Appellant do not demonstrate that OHS acted erroneously or unreasonably.

[13] The Appellant does not assert that it was compliant with the *Occupational Health and Safety Code* ("Code"). It does not raise any legal argument with the Administrative Penalty itself or the process under which it was issued.

[14] The Appellant's position is forward looking, essentially saying that it will be more careful to comply with OHS standards and regulations in the future.

[15] This Council does not need to rule on the OHS argument that Council lacks legal jurisdiction to revoke or vary an Administrative Penalty for reasons of financial hardship. There is no legal basis to interfere with *this* Administrative Penalty as it is issued and as this appeal has been argued by this Appellant.

VIII. Order

[16] Council dismisses the appeal by Sohal and confirms the Administrative Penalty as set out in the Notice letter dated March 9, 2017.