

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## DEPARTMENT OF LABOR

### OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

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STATE OF ALASKA,	)
DEPARTMENT OF LABOR,	)
	)
Complainant,	)
	)
vs.	)
	)
BROWNING TIMBER, INC.,	)
	)
Contestant.	)

Docket No. 93-983

### DECISION AND ORDER

Browning Timber, Inc. (Browning) has petitioned the Board to accept its late-filed notice of contest. The Department of Labor opposes the petition. Upon consideration, the Board makes the following findings of fact, conclusions of law and order in this matter.

### FINDINGS OF FACT

1. On June 2, 1993, the Department conducted an occupational safety and health inspection at Browning's workplace at Whipple Creek, Ketchikan, Alaska.

2. As a result of the inspection, the Department issued a citation to Browning alleging a "serious" violation of Alaska occupational safety and health codes. The citation included a proposed penalty of \$1225.00.

3. The Department's citation was sent by certified mail to Browning's Alaska office in Cordova, Alaska. The certified mail receipt indicates that the citation was received by the Cordova office on July 13, 1993.

4. Pursuant to Alaska Statute 18.60.093, the 15 working day period to contest the citation expired on August 3, 1993, without any notice of contest being filed by Browning.

5. In a letter dated August 18, 1993, Browning's president Wayne Browning for the first time notified the Department that he wished to contest the monetary penalty assessed in connection with the citation.

6. Browning's letter states in relevant part:

In explanation to the lateness of this appeal, the Corporate office in White Salmon, Wa. did not receive this notice until August 5, 1993 and I felt I needed to contact our Superintendent Mike Meske to make sure all violations had been corrected. I hope you will allow this appeal to be heard.

#### CONCLUSIONS OF LAW

AS 18.60.093(a) provides that if an employer fails to notify the Board of its intention to contest a citation or penalty within 15 working days of receipt, the citation and penalty are considered final and not subject to review by any court. However, we have previously held that a late notice of contest may be allowed under Alaska Civil Rule 60(b) upon a showing of mistake, inadvertence, surprise, excusable neglect or any other reason justifying relief from a final order. Each petition to accept a late notice of contest must be evaluated on its own merits. Neal

and Company, Inc., Docket No. 91-858, Decision and Order (Alaska OSH Rev. Bd., May 3, 1991).

In this case, Browning's reason for the late notice of contest was that there was a delay in forwarding the citation to its corporate office in Washington and company officials needed more time to review the matter with their Alaska superintendent. This reasoning, however, has not been found persuasive in similar cases before this Board and in federal OSHA cases. For example, in Neal and Company, Inc., supra, we rejected an employer's late notice of contest caused by a delay in transmitting the citation from its field office to its main office and subsequent review of the matter by the company president. We observed:

[F]ederal courts have rejected the notion that the contest period should begin running when appropriate corporate officials receive the citation rather than when the citation was actually received at the company's office. See Capital City Excavating Co. v. Donovan, 679 F.2d 105 (6th Cir. 1982).

See also Silver Bow Construction, Docket Nos. 93-970 and 93-971, Decision and Order (Alaska OSH Rev. Bd., June 3, 1993) (failure to forward citation to appropriate company officials insufficient to excuse late notice of contest).

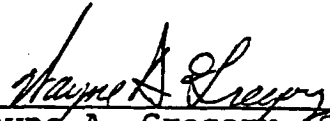
Based on the foregoing authority, we find no grounds under Civil Rule 60(b) to set aside the final order under AS 18.60.093(a).

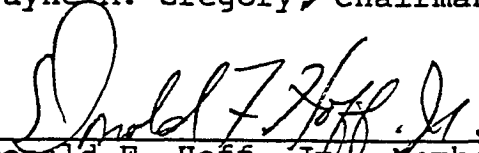
ORDER

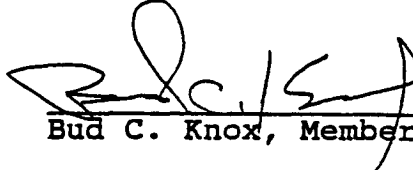
Browning's petition to file a late notice of contest is denied. The Department's citation and penalty are affirmed pursuant to AS 18.60.093(a).

DATED this 17<sup>th</sup> day of November, 1993.

ALASKA OCCUPATIONAL SAFETY  
AND HEALTH REVIEW BOARD

  
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