

REVIEW DECISION

Re: Review Reference #: R0327936
Board Decision under Review: July 29, 2024

Date: April 2, 2025

Review Officer: Kit Wong

Background

On May 30, 2024, an officer of the Workers' Compensation Board ("Board"), operating as WorkSafeBC, inspected a worksite where a new roof was being installed. The Board officer observed two workers on the roof working without a fall protection system.

During the inspection, the two workers refused to answer the officer's questions. The Board officer was sworn at and told to get off the property by the workers. One of the workers was later identified as the owner of the employer, a roofing company.

The Board issued orders to the employer for violating sections 79(1), 79(2)(a), and 79(2)(b) of the *Workers Compensation Act* ("Act") on May 30, 2024.

On July 29, 2024, Board imposed an administrative penalty on the employer in the amount of \$2,500.00, for the violations.

The employer requested a review of the penalty order. In the course of the review, I spoke with G, the owner of the employer, who provided further information. Afterwards, G also provided a written submission in the review.

Section 20(3) of the *Act* gives me the authority to conduct this review. Section 339(2) of the *Act* requires me to make a decision on the merits and justice of the case, applying the policies of the Board's board of directors applicable in the case. The policies are found in the *Prevention Manual*. The standard of proof that applies to this review is the balance of probabilities.

Issue

The issue on review is the Board's order imposing an administrative penalty of \$2,500.00 on the employer.

Reasons and Decision

Under section 95(1) of the *Act*, the Board has authority to impose a penalty on an employer when, among other things, the employer has failed to comply with the *Act* or *Regulation*.

The employer did not request a review of the violation orders which resulted in the penalty, so the orders stand. Nevertheless, I must still consider whether the underlying violations are established on the evidence so as to support the imposition of a penalty.

The Violations

Section 79 of the *Act* reads as follows:

- (1) A person must provide all reasonable means in that person's power to facilitate an inspection under the OHS provisions.
- (2) A person must not do any of the following:
 - (a) hinder, obstruct, molest or interfere with, or attempt to hinder, obstruct, molest or interfere with, an officer in the exercise of a power or the performance of a duty or function under the OHS provisions or the regulations;
 - (b) knowingly provide an officer with false information, or neglect or refuse to provide information required by an officer in the exercise of the officer's powers or performance of the officer's duties or functions under the OHS provisions or the regulations;

The Board officer noticed two individuals on the sloped roof of the property, working without any fall protection. The roof height in parts ranged from over 10 feet to 20 feet from the ground. Neither were using fall protection. As a result, the Board officer went over to them and introduced himself. Neither worker would identify themselves or tell him who was the supervisor. The second worker, G, later identified as the owner of the employer and the supervisor, did most of the talking. He told the officer to "f- off" and to go harass someone else. G also said he would not answer any of the officer's questions and told him to get off the property. He repeatedly swore at the officer and called him names.

The officer attempted to speak with the homeowner by walking to the front door and ringing the doorbell. No one answered. G at one point stated he was the homeowner but would not provide further information.

The officer went back to his vehicle and called his supervisor, and also called the employer's office. This was after he noticed a work van parked at the side of the house with the employer's company name on the van. When he called the

employer's number, a man answered who identified himself as the owner of the employer. When the officer asked him about the work being done at the address in question, the man said he had to go. The Board officer then posted a stop work order placard at the worksite and advised G of the placard, and that he wanted to meet tomorrow with them and the owner. G then identified himself as the owner of the employer. When asked why he did not identify himself to the Board officer to begin with, G said it was because the officer was trespassing on private property.

A land title search identified the actual owners of the residence. The next day, one of the owners called the Board officer leaving a message confirming that the employer had been hired to repair the roof as the employer was able to do the work right away, and this was an urgent repair job due to a leaking roof.

In our phone conversation on February 21, 2025, G said he had just started work tarping the roof when the Board officer came by and asked him to come down. G said there was a misunderstanding by the Board officer when G referred to himself as the owner. He meant he was the owner of the employer, not the owner of the house. It was G's view that the Board officer "came down pretty hard" on them for what was a minor issue. G said there was a rainstorm, and the timing of the officer's arrival was not right as he needed to finish tarping the roof. G thought the Board officer had overreacted. G felt what they were doing on the roof was not unsafe, and was low risk work.

In his submission, G said he did not fail to identify himself. He said he was the owner, meaning the owner of the employer, which the Board officer misunderstood to mean the homeowner. G said the other individual on the roof was not a paid employee but his tenant, helping out. G felt the officer was trying to prove a point.

After considering the evidence and submissions, I find the employer failed to provide all reasonable means in its power to facilitate an inspection under the OHS (occupational health and safety) provisions of the *Act*, in violation of section 79(1) of the *Act*.

G has not really disputed the Board officer's account of what occurred. G says that when he identified himself at one point as the owner, the Board officer misunderstood him to mean the owner of the property, when G actually meant the owner of the employer.

I find that G could have easily clarified he was the owner of the employer at any point. The Board officer's notes specifically recorded that neither individuals would say who they were or what company they were with. The officer was called names, sworn at, and told to leave. According to the notes, it was not until later, after the Board officer posted the stop work order, that G identified himself as the owner of the employer. The Board officer specifically wrote in his notes that when

he asked why G had not identified himself at the start, G said it was because the officer was trespassing on private property.

I am left to conclude that G meant to mislead the Board officer to think he was the homeowner, so as to make the officer leave the property and stop the inspection.

The evidence establishes that G and the other individual would not answer even basic questions such as who they were, what company they worked for, and who the homeowner was. There was a clear intention from the start by G not to cooperate with the Board officer, and to deter the officer from doing an inspection.

G is of the personal view that what occurred on the roof was not unsafe, and was of low risk. G says they were in a rush to finish the repair job given the weather conditions. However, the photos show it was a sloped roof from which a fall from over 10 feet could occur. The conditions were wet and therefore slippery. Neither were wearing fall protection, which was a regulatory requirement in this situation. I find G's reasons for impeding and preventing the officer from conducting a workplace inspection are not reasonable.

I find the violation under section 79(2)(a) by the employer is also established on the evidence. The employer clearly hindered and obstructed the officer in the exercise of his powers and the performance of his duty under the OHS provisions. Section 75 of the *Act* sets out the Board's authority to conduct workplace inspections as part of its OHS mandate to prevent work-related accidents and injuries, and to determine compliance with OHS requirements. The officer started the inspection because he had reasonable grounds to believe that there was a situation that may be hazardous to workers at this worksite, who were working on a sloped roof at over 10 feet without fall protection.

Finally, the employer also violated section 79(2)(b) when G knowingly refused to provide basic information about who he was and who the employer was, when questioned by the officer. This was basic information that the Board officer needed to know in order to conduct a proper workplace inspection.

I find the three violations are established on the evidence, providing a basis for the administrative penalty.

Due Diligence

Section 95(3) of the *Act* indicates that an administrative penalty must not be imposed if the employer exercised due diligence to prevent the failure or non-compliance to which the penalty relates. Policy item P2-95-9, *OHS Penalties - Due Diligence*, explains that an employer acts with due diligence where the employer shows that it took all reasonable care to prevent the particular event.

The individual who primarily hindered the inspection, obstructed the officer from the exercise of his duties and powers, and who refused to provide information was the owner of the employer, so the violations are directly attributable to the employer. G does not have a reasonable explanation for why he committed the violations. In fact, he knowingly refused to provide relevant information to the Board officer.

The employer was not duly diligent and therefore a penalty can be imposed on the employer for the violations.

Criteria for Imposing a Penalty

Policy item P2-95-1, *Criteria for Imposing OHS Penalties*, explains that the Board must consider a penalty where at least one of the following applies:

- The violation resulted in a high risk of serious injury, serious illness or death;
- The employer previously violated the same, or substantially similar, sections of the *Act* or *Regulation*, or the violation involves failure to comply with a previous order within a reasonable time;
- The employer intentionally committed the violation;
- The employer violated section 73 of the *Act*;
- The employer violated section 79 of the *Act*;
- The employer violated a stop work order or stop use order; or
- The Board considers that the circumstances warrant a penalty.

Given this case involves violations of section 79 of the *Act*, a penalty had to be considered by the Board in respect of those violations.

Additional Factors in Deciding Whether to Impose a Penalty

Policy item P2-95-1 also sets out three additional factors that must be considered with regard to imposing a penalty:

1. The potential for serious injury, illness or death in the circumstances, based on the available information at the time of the violation;

2. The likelihood that the penalty will motivate the employer and other employers to comply in the future, taking into account one or more of the following:
 - a) The extent to which the employer was or should have been aware of the hazard;
 - b) The extent to which the employer was or should have been aware that the *Act* or *Regulation* were being violated;
 - c) The compliance history of the employer;
 - d) The effectiveness of the employer's overall approach to managing health and safety, and
 - e) Whether other enforcement tools would be more appropriate;
3. Any other relevant circumstances.

The employer asks that a penalty not be imposed. I find that a penalty is appropriate in the circumstances. The inspection started because the Board officer noticed unsafe work being done on the roof in violation of the *Regulation*. The officer would not be doing his job if he had not inspected the worksite in order to determine if workers were involved and to prevent unsafe work conditions from continuing. Instead of cooperating with the Board officer and providing basic information about the situation, G refused to answer all questions, verbally abused the officer, and told him to leave. G also misled the officer about who the owner of the property was, to further hinder the officer's ability to investigate matters.

I recognize the employer does not have a recent history of non-compliance. G says the employer has been registered with the Board since 1998 and has no injury claims or fines.

However, the actions of the employer go to the heart of the Board's ability to inspect, investigate and determine necessary corrective actions by employers and workers, in order to protect the health and safety of workers, and to prevent worker injury or death. By hindering and obstructing the Board officer the employer made it difficult for the Board to carry out this important, primary mandate.

As these violations undermine the Board's ability to carry out its occupational health and safety mandate, and given the extent of the employer's obstruction, I find that a penalty is needed to motivate the employer as well as other like-minded employers to comply with the *Act* going forward.

The Penalty Amount

Policy item P2-95-5, *OHS Penalty Amounts*, sets out how the penalty amount is determined. It provides that a penalty amount is determined based on the

employer's assessable payroll for the calendar year immediately prior to the incident that gave rise to the penalty, or an estimate. An initial amount is calculated by multiplying the penalty payroll by 0.5%. This amount cannot be less than the minimum amount of \$1,250.00. The Board determined that the minimum amount of \$1,250.00 applied in this case.

The policy provides for the application of multipliers to the amount. The Board applied the multiplier for a violation of section 79 of the *Act*, which doubled the minimum amount. I agree with the application of this multiplier.

The policy also provides for another multiplier where the violation is intentional. The Board did not apply this multiplier, which would have increased the amount.

I considered whether this second multiplier should also be applied, given that the evidence supports that the violations were intentional, particularly when the principal knowingly refused to provide information to the Board officer.

The employer is a small company. I note that the amount of a penalty is meant to be proportionate to the size of the employer, as it is based on a percentage of the specific employer's payroll. G said that with the penalty the employer received, it essentially did this small roofing job for free.

The policy allows for the variation of a penalty upwards or downwards by 30%, if there are exceptional circumstances. Financial hardship on an employer may be an exceptional circumstance to justify reducing a penalty.

The employer asks that the fine be reduced. However, other than saying that no money was made on this roofing job, the employer did not provide any specific evidence to establish financial hardship on the employer's part. In addition, the Board did not apply the second multiplier that would increase the penalty amount, when arguably it could apply. In the circumstances, I find the penalty amount to be appropriate. As the Board did not apply the second multiplier, I will not disturb that decision. There is also insufficient basis to reduce the penalty amount, as the evidence does not establish exceptional circumstances based on financial hardship. Therefore, I confirm the amount of the penalty.

I deny the employer's request.

Conclusion

As a result of the review, I confirm the Board's penalty order of July 29, 2024.

Kit Wong
Review Officer
Review Division