

Stoneridge Contractors

SAFETY AND HEALTH

Service of citation and notice

The presumption of communication of certified mail can be rebutted by showing that the party who received the certified mail wasn't an authorized agent of the employer. The employer directed the UPS Store, although a mail agent for the employer, to refuse acceptance of all certified mail. The UPS Store's acceptance of the certified mail does not establish communication.*In re Stoneridge Contractors, Order Vacating Proposed Decision and Order and Remanding the Appeal for Further Proceedings, BIIA Dec., 16 W0085 (2017)*

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**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

1 IN RE: STONERIDGE)	DOCKET NO. 16 W0085
2 CONTRACTORS, LLC.)	
3)	
4 <u>CITATION & NOTICE NO. 317938193</u>)	ORDER VACATING PROPOSED DECISION AND ORDER AND REMANDING THE APPEAL FOR FURTHER PROCEEDINGS
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6 Stoneridge Contractors, LLC, has appealed a Citation and Notice of Assessment ("Citation")
7 assessing penalties of \$15,500 for safety violations under the Washington Industrial Safety and
8 Health Act. The Department of Labor and Industries contends Stoneridge's appeal was not timely.
9 The timeliness of Stoneridge's appeal depends on whether the UPS Store ("the Store") to which the
10 Department sent the citation by certified mail had authority to accept certified mail on Stoneridge's
11 behalf. If the Store had the authority, Stoneridge's appeal was untimely. If the Store did not have
12 the authority, the citation was not communicated to Stoneridge until four days after the Store signed
13 for it, and its appeal was timely. Our industrial appeals judge concluded that the Store had the
14 authority to accept Stoneridge's certified mail, and that as a consequence, Stoneridge's appeal was
15 not timely. Stoneridge filed a timely Petition for Review of the Proposed Decision and Order. We
16 grant review because we conclude that Stoneridge did not authorize the UPS Store to accept
17 Stoneridge's certified mail. The citation was therefore not communicated to Stoneridge until four days
18 after the Store signed for it, and Stoneridge's appeal was timely. The Proposed Decision and Order
19 of May 1, 2017, is vacated and this appeal is **REMANDED FOR FURTHER PROCEEDINGS.**

DISCUSSION

1. Facts

22 Stoneridge was formed in April 2015 by its owner, Steve Spady. He has always received the
23 company's mail at a private mail box that he rents at a UPS store in Spokane. No written agreement
24 between Stoneridge and the Store was offered as evidence.

25 In a letter to the Store dated November 12, 2013, Mr. Spady requested that the Store not
26 accept certified mail on behalf of him, "his named companies . . . and any others that may arise over
27 the duration of the rental of [the mail] box." Instead, he asked that the Store notify him of the existence
28 of the certified mail at the United States Postal Office for him to claim. No evidence was presented
29 by the Store or anyone else to suggest that the Store or the United States Postal Service could not
30 or would not abide by the request. Spring Cole, the Store's manager as of February 2016, made
31 clear that the Store had been honoring the request since she became manager. She had no
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1 information about whether Stoneridge had made the same request before February 2016. On at
2 least one occasion after Stoneridge filed this appeal, the Store and the United States Postal Service,
3 each showed by their actions that they were ready, willing, and able to honor Stoneridge's request.

4 Nonetheless, on December 5, 2015, a former employee of the Store, Brooke Hinrichs, signed
5 for a piece of certified mail for Stoneridge; it turned out to be the Department's Citation. Mr. Spady
6 personally received the Citation when he picked up his company's mail at the Store four days later
7 on December 9, 2015. This was his first day back to work after a family vacation to Oregon for
8 Thanksgiving. He mailed Stoneridge's Notice of Appeal of the citation to the Department on
9 December 30, 2015, by certified mail.

10 **2. The Department's Delivery of the Citation by Certified Mail to a Proper Address for**
11 **Stoneridge Constituted a Rebuttable Presumption of Communication to the Employer.**

12 In issuing a WISHA citation, RCW 49.17.140 provides that the Department:

13 [s]hall notify the employer using a method by which the mailing can be
14 tracked or the delivery can be confirmed of the penalty to be
15 assessed . . . and shall state that the employer has fifteen working days
16 within which to notify the director that the employer wishes to appeal the
17 citation or assessment of penalty. If, **within fifteen working days from**
18 **the communication of the notice** issued by the director the employer
19 fails to notify the director that the employer intends to appeal the citation
20 or assessment penalty, and no notice is filed by any employee or
representative of employees under subsection (3) of this section within
such time, the citation and the assessment shall be deemed a final order
of the department and not subject to review by any court or agency.¹

21 The Department has complied with this provision when it has "attempt[ed] communication of a citation
22 to an address of the employer that is reasonably calculated to be successful."²

23 However, the Department's compliance with the provision does not mean that the citation has
24 therefore been "communicated" to the employer.

25 RCW 49.17.140 requires more than proper notice of the Citation; **it**
26 **requires actual receipt by the employer or its authorized agent. Mere**
proof of delivery to the proper premises is not sufficient.³

27 Stated another way, proof of delivery of the citation to the proper premises "**create[s] a rebuttable**
28 **presumption of receipt by the employer.**"⁴ It can be rebutted by proof that the person who received
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30 ¹ RCW 49.17.140(1) (Emphasis added).

31 ² *In re Rhino Linings of Northwest, Inc.*, Dckt. No. 04 W0261 (February 28, 2006).

32 ³ *In re Shake Specialists, Inc.*, Dckt. No. 93 W342-T (September 6, 1994) (Emphasis added).

⁴ *Shake Specialists* at 4. (Emphasis added).

1 the citation at the employer's address **had no authority** to accept certified mail for the employer
2 when it arrives in that form.⁵ In contrast, the employer has **not** rebutted the presumption when it
3 "present[s] no evidence regarding the identity of [the person who accepted the citation] or proof that
4 this person was not authorized to accept certified mail."⁶

5 Here, the Department complied with RCW 49.17.140 by sending the citation by certified mail
6 to the UPS Store, a proper address for Stoneridge. Pursuant to the statute, Stoneridge had
7 15 working days from the date the citation was "communicated" to it to appeal the citation. That date
8 of communication depends on whether the UPS Store employee who signed for the citation was
9 authorized to accept certified mail for Stoneridge.

10 **3. Stoneridge Rebutted the Presumption that the Person who Signed for the Certified**
11 **Mail had Authority to Accept it on the Employer's Behalf**

12 Over two years before the Department mailed the citation to Stoneridge at the UPS Store by
13 certified mail, Mr. Spady asked the Store, in writing, to not accept any of his present or future
14 companies' certified mail. After receiving the request, the Store never suggested to Mr. Spady or
15 Stoneridge that it could not honor it. Moreover, after receiving the request, both the Store and the
16 United States Postal Service honored the request at times, giving Stoneridge every reason to believe
17 it had authority to preclude the Store from accepting its certified mail.

18 Based on Mr. Spady's explicit written directive to the UPS Store in 2013, and the Store and
19 the Postal Service's subsequent conduct honoring the request at times, Stoneridge has rebutted the
20 presumption that Ms. Hinrichs was authorized to accept the certified mail carrying the citation on
21 December 5, 2015. This means the citation was first communicated to Stoneridge when Mr. Spady
22 picked it up at the Store on December 9, 2015. Fifteen working days after December 9, 2015, was
23 December 31, 2015. As Stoneridge mailed its appeal of the citation by certified mail on December 30,
24 2015, its appeal was timely.

25 We cannot agree with our industrial appeals judge's reasoning that led him to the opposite
26 conclusion. Our judge cited a regulation of the *Domestic Mail Manual* ("DMM") that states that a
27 commercial mail receiving agency ("CMRA") owner such as the UPS Store cannot refuse to accept
28 certified mail for a customer-addressee.⁷ We cannot conclude the provision applies, however.

29 ⁵ *Shake Specialists*.

30 ⁶ *In re Discount Tire Company of Washington, Inc.*, Dckt. No. 05 W1191 (September 5, 2006).

31 ⁷ *United States Postal Service, Domestic Mail Manual* 508.1.8.3 (May 31, 2015). The *DMM* is comprised of postal
32 regulations that are incorporated by reference into the Code of Federal Regulations and have the force and effect of law.
Barton v. United States Postal Serv., 615 F. Supp. 2d 790, 794 (2009).

1 According to the DMM, mail will be delivered to a particular customer-addressee through a CMRA
2 owner only if both have signed what is called a Form 1583.⁸ No evidence was presented that
3 Stoneridge and the Store contracted by way of the form. Moreover, assuming for the sake of
4 argument that the CMRA provision would otherwise apply, the United States Postal Service made it
5 inapplicable by its conduct. By at times honoring Stoneridge's request that the Store refuse its
6 certified mail, the Postal Service departed from its own regulations and condoned the arrangement.⁹
7 We will not now deem a nullity what the Postal Service allowed at the time.

8 Our industrial appeals judge cited additional law in support of his conclusion that the UPS
9 Store was authorized to accept Stoneridge's certified mail. Those authorities are inconsistent with
10 our decisions interpreting RCW 49.17.140, however. In *Shake Specialists* and *Discount Tire*
11 *Company*, we make clear that: (1) the analysis of whether a citation has been communicated to an
12 employer is not complete once the Department has done all that it is required to do; (2) a person's
13 acceptance of a citation by certified mail at a proper address of the employer is not "communication"
14 to the employer if the person has no authority to sign for the mail; and (3) a person's "apparent"
15 authority to sign is not part of the analysis.

16 ORDER

17 The May 1, 2017 Proposed Decision and Order is vacated. This order vacating is not a final
18 Decision and Order of the Board within the meaning of RCW 51.52.110.

19 This appeal is remanded to the hearings process, as provided by WAC 263-12-145(5), for
20 further proceedings as indicated by this order. Unless the matter is settled or dismissed, the industrial
21 appeals judge will issue a new Proposed Decision and Order. The new order will contain findings
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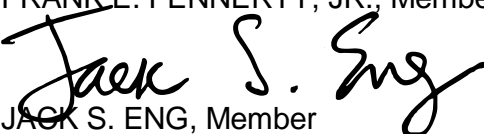
31 ⁸ DMM 508.1.8.2 a. (May 31, 2015).

32 ⁹ *Kueckelhan v. Fed. Old Line Ins. Co.*, 69 Wn.2d 392, 413 (1966) (Governmental agencies "can, under certain circumstances, condone past offenses against the law.")

1 and conclusions as to each contested issue of fact and law. Any party aggrieved by the new
2 Proposed Decision and Order may petition the Board for review, as provided by RCW 51.52.104.

3 Dated: July 5, 2017.

4 BOARD OF INDUSTRIAL INSURANCE APPEALS

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**Addendum to Order
In re Stoneridge Contractors, LLC
Docket No. 16 W0085
Citation & Notice No. 317938193**

Appearances

Employer, Stoneridge Contractors, LLC, by Parsons Burnett Bjordahl, LLP, per Stacy A. Bjordahl

Employees of Stoneridge Contractors, LLC, by None

Department of Labor and Industries, by Office of the Attorney General, per G. Ward McAuliffe

Department Order(s) Under Appeal

The employer, Stoneridge Contractors, LLC, filed an appeal with the Department of Labor and Industries' Safety Division on December 30, 2015. The Department transmitted the appeal to the Board of Industrial Insurance Appeals on February 22, 2016. The employer appeals No. 317938193 issued by the Department on December 3, 2015. In this notice, the Department alleged violations of seven safety rules and assessed monetary penalties totaling \$15,500.

Petition for Review

As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision. The employer filed a timely Petition for Review of the Proposed Decision and Order issued on May 2, 2017. The Department filed a timely response to the petition.