

Sposari, Inc., (Mr. Rooter Plumbing)

SAFETY AND HEALTH

Department's right to vacate citation

The Board cannot compel the Department to pursue enforcement of its citation and will grant the Department's motion to vacate and abandon enforcement of the citation. ...*In re Sposari, Inc., (Mr. Rooter Plumbing)*, BIIA Dec., 16 W0358 (2017)

Scroll down for order.

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

1 **IN RE: SPOSARI INC., DBA**)
2 **MR. ROOTER PLUMBING**)
3)
4)
5 **CITATION & NOTICE NO. 317940256**) **DOCKET NO. 16 W0358**
6) **DECISION AND ORDER GRANTING**
7) **DEPARTMENT'S MOTION TO VACATE**

8 Corrective Notice of Redetermination No. 317940256 affirmed the Department's original
9 citation alleging one serious violation and assessing a monetary penalty against the employer that
10 timely filed this appeal. At a hearing held on March 27, 2017, the Department moved to vacate its
11 order. Our industrial appeals judge denied the motion, and instead issued a Proposed Decision Order
12 vacating the Corrective Notice because the Department failed to present evidence when due. The
13 Department filed a Petition for Review and argues that it was error to deny its motion to vacate. We
14 agree, and grant the Department's motion to vacate.

DISCUSSION

15 The Department, as the party with the burden of proof in appeals under the Washington Safety
16 and Health Act, can move to vacate a citation in its entirety.¹ Although the Department does not have
17 the power to unilaterally modify the underlying citation,² the Department maintains the discretion to
18 request an order vacating all, or a portion of, its citation. The Board lacks statutory authority to deny
19 the Department the ability to choose to not prosecute an appeal of its citations. The Department
20 cannot be compelled to pursue the enforcement of its citation, and it was error not to grant its motion
21 to vacate the citation.

DECISION

22 The employer, Sposari, Inc., dba Mr. Rooter Plumbing Services, filed an appeal with the Board
23 of Industrial Insurance Appeals on December 30, 2016, from Corrective Notice of Redetermination
24 No. 317940256, issued by the Department on December 21, 2016. On March 27, 2017, the
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46 ¹ See, RCW 4.56.120.

47 ² See, *Erection Company v. Department of Labor & Indus.*, 121 Wn.2d 513 (1993).

1 Department moved to vacate the citation. The Department's motion to vacate is granted, and
2
3 Corrective Notice of Redetermination No. 317940256 is vacated.

4 Dated: July 27, 2017.

6 BOARD OF INDUSTRIAL INSURANCE APPEALS

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8 LINDA L. WILLIAMS, Chairperson

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10 FRANK E. FENNERTY, JR., Member

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12 JACK S. ENG, Member

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Addendum to Decision and Order
In re Sposari Inc. DBA MR. Rooter Plumbing
Docket No. 16 W0358
Citation & Notice No. 317940256

Appearances

Employer, Sposari, Inc., dba Mr. Rooter Plumbing Services, by AMS Law, P. C., per W. Scott Noel

Employees of Sposari, Inc., dba Mr. Rooter Plumbing Services, by None

Department of Labor and Industries, by Office of the Attorney General, per Andrew J. Simons

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 Department filed a timely Petition for Review of a Proposed Decision and Order issued on April 20, 2017, in which the industrial appeals judge vacated the Department order dated December 21, 2016, for the failure to present evidence when due.