

April 16, 2014

Mr. Daniel Fraley, dba Fabricated Metals, Inc.
208 East Antietam Street
Hagerstown, Maryland 21740

Re: MOSH Case No. C5026-034-13
OAH No. DLR-MOSH-41-13-36571

Dear Sir:

Enclosed is the Final Decision and Order issued today in the case noted above.

Sincerely yours,



Minnie L. Godsey
Administrative Officer
Office of the Commissioner
of Labor and Industry

Enclosure

cc: Jenny Baker/Sarah Harlan, Assistant Attorneys General
Hilary A. Baker, Assistant Attorney General
✓ Catherine Bellinger, Assistant Attorney General
Judge Jana Burch, Office of Administrative Hearings
Librarian, Office of Administrative Hearings
MOSH Office of Review

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

IN THE MATTER OF

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BEFORE THE

*

COMMISSIONER OF LABOR

DANIEL FRALEY

*

AND INDUSTRY

FABRICATED METALS, INC.

*

MOSH CASE NO. C5026-034-13

*

OAH CASE NO. DLR-MOSH-

41-13-36571

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FINAL DECISION AND ORDER

FINDINGS OF FACT

This matter arose under the Maryland Occupational Safety and Health Act, Labor and Employment Article, Title 5, *Annotated Code of Maryland*. A hearing on citations issued against Daniel Farley, d/b/a Fabricated Metals (the Employer”), by the Maryland Occupational Safety and Health Unit of the Division of Labor and Industry (“MOSH”) was scheduled for March 27, 2014 at 9:30 am.

Notice of the hearing was issued by MOSH on September 23, 2013 and regular mail. The certified mail receipt was returned as claimed by the Employer and the U.S. Postal Service did not return the two regular mail letters that were sent to the Employer. All letters sent to the Employer stated the date and time of the hearing. In addition, counsel for MOSH telephoned the Employer and left a message regarding the date and time of the hearing. The Employer failed to appear for the hearing.

By letter dated March 28, 2014, Administrative Law Judge Marina Sabett, sitting as Hearing Examiner, notified the Employer that the “failure to appear is deemed a waiver and withdrawal of the Notice of Contest under Code of Maryland Regulations (COMAR) 09.12.20.13H” and that the Employer had 15 working days from the receipt of the letter to request that the Notice of Contest be reinstated.

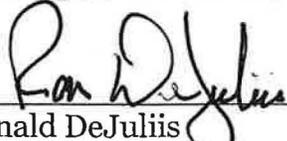
On March 31, 2014, the Employer sent a letter to the Commissioner requesting another chance for the case to be reviewed. The Employer claims that the day before the hearing, he called the wrong office within the Office of Administrative Hearings (OAH) to confirm the hearing but did not have the case number. The next day he called again with the case number and was told that he was calling the OAH wrong office.

CONCLUSIONS OF LAW

A request for reinstatement of the Notice of Contest may be granted “only upon a showing of good cause for the failure to appear for hearing.” COMAR 09.12.20.13H(3). The Employer has not shown good cause for failure to appear for the hearing. The fact that the Employer did not call the proper office to confirm the hearing does not constitute good cause. The Employer had received four letters and a telephone call with the date and time of the hearing. Accordingly, the Employer has not shown good cause for failing to appear at the hearing and is deemed to have withdrawn its notice of contest and waived its right to a hearing. The citations are final and the penalties are due and owing.

ORDER

The Commissioner of Labor and Industry hereby ORDERS this 16th day of April, 2014 that the citations issued in this matter are final and the penalties due and owing. This Order becomes final 15 days after issuance. Judicial review may be requested by filing a written request for review with the appropriate circuit court within 30 days after this Order becomes final. See Labor and Employment Article, § 5-215, *Annotated Code of Maryland*, and the Maryland Rules, Title 7, Chapter 200 et. seq.



J. Ronald DeJuliis
Commissioner of Labor and Industry

RECEIVED

APR 23 2014

OFFICE OF THE
ATTORNEY GENERAL