

IN THE MATTER OF

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BEFORE THE

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COMMISSIONER OF LABOR

B.W.S. INDUSTRIES

\*

AND INDUSTRY

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MOSH CASE NO. N6745-03-17  
OAH CASE NO. DLR-MOSH-41-  
17-32535

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**FINAL DECISION AND ORDER**

This matter arose under the Maryland Occupational Safety and Health Act, Labor and Employment Article, Title 5, *Annotated Code of Maryland*. A hearing on a citation issued against B.W.S. Industries (“B.W.S.” or “Employer”) by the Maryland Occupational Safety and Health Unit (“MOSH”) of the Division of Labor and Industry was scheduled for December 18, 2017.

Notice of the hearing was issued by the Department on October 10, 2017 by both certified and regular mail. The certified mail receipt was returned as claimed by the Employer. The regular mail copy of the Notice was not returned to the Division by the United States Postal Service. The Employer had contact with the Assistant Attorney General representing MOSH who referenced the upcoming December hearing. The Employer did not appear at the hearing. By letter dated December 21, 2017, Administrative Law Judge Stephen Thibodeau, sitting as Hearing Examiner, notified the Employer that the “failure to appear is deemed a waiver and withdrawal of the Notice of Contest under the Code of Maryland Regulations” (“COMAR”) .09.12.20.13H and that

the Employer had 15 working days from receipt of the letter to request that the Notice of Contest be reinstated.

On January 3, 2018, B.W.S. filed a request for reinstatement. B.W.S. asserted that the OAH letter was sent to an old address as well as making other arguments regarding the merits of the citation.<sup>1</sup> On February 1, 2018, the Commissioner of Labor and Industry, having determined that the Assistant Attorney General representing MOSH had not received a copy of the Employer's request, provided MOSH with an opportunity to provide a response. On February 6, 2018, MOSH filed its response asserting that the Employer's request for reinstatement should be denied due to the fact that the certified mail receipt for the hearing notice was returned signed by the Employer and that in October and early December, the Assistant Attorney General representing MOSH contacted the Employer regarding a pre-hearing conference and referenced the December 18, 2017 hearing.

### 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 .09.12.20.13(h) (3). The Employer has not shown good cause for failure to appear at the hearing. As set forth above, there is proof that the Employer received the notice of the December 18, 2017 hearing in addition to the fact that the Employer had contact with the Assistant Attorney General representing MOSH who referenced the upcoming December hearing. Accordingly, the Employer has not shown good cause for failing to appear at the hearing

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<sup>1</sup> The only issue before the Commissioner is whether the Employer has demonstrated good cause to reinstate the notice of contest. The merits of the underlying citation are not before the Commissioner,

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 8<sup>th</sup> day of February 2018 that the citation issued in this matter is final and the penalties due and owing, This Order becomes final 15 days after issuance. Judicial review may be requested by filing a written order for review with the appropriate circuit court within 30 days after this Order becomes final. *See* Labor and Employment Article, Section 5-215, Annotated Code of Maryland, and the Maryland Rules, Title 7, Chapter 200 et seq.

  
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Matthew Helminiak  
Commissioner of Labor and Industry