

FILED
Court of Appeals
Division II
State of Washington
10/1/2019 2:14 PM

NO. 53180-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

OSTROM MUSHROOM FARM COMPANY,

Respondent,

v.

WASHINGTON STATE DEPARTMENT
OF LABOR AND INDUSTRIES,

Appellant.

REPLY BRIEF,
DEPARTMENT OF LABOR AND INDUSTRIES

ROBERT W. FERGUSON
Attorney General

STEVE VINYARD
Assistant Attorney General
WSBA #29737
Office Id. #91022
Labor and Industries Division
7141 Cleanwater Drive SW
P.O. Box 40121
Olympia, WA 98504-0121
(360) 586-7715

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	ARGUMENT	2
	A. Substantial Evidence Supports the Board’s Finding That Ostrom Failed To Abate the Hazard	3
	1. Ostrom’s argument that the findings are unsupported by substantial evidence fails as it ignores the evidence that supports the Board’s findings.....	5
	a. Ostrom managers told the inspector that Ostrom did not have eyewash stations.....	5
	b. In 2016, in the inspector’s walk around, he did not see an eyewash station	7
	2. Ostrom’s argument that it purchased the eyewash kits to address a different hazard— paraformaldehyde—fails to show that the Board’s findings are unsupported by substantial evidence	9
	3. Ostrom’s attacks on the Board decision lack merit.....	11
	B. Substantial Evidence Shows That Ostrom Had Both Actual and Constructive Knowledge of the Violative Working Conditions.....	14
	C. The Department’s Penalty Calculation Was Correct and It Exercised Reasonable Discretion When It Multiplied the Base Penalty by Ten.....	16
III.	CONCLUSION	18

TABLE OF AUTHORITIES

Cases

Aviation West Corp. v. Dep't of Labor & Indus.,
138 Wn.2d 413, 980 P.2d 701 (1999)..... 4

Erection Co. Inc. v. Dep't of Labor & Indus.,
160 Wn. App. 194, 248 P.3d 1085 (2011)..... 15, 16

Frank Coluccio Const. Co. v. Dep't of Labor & Indus.,
181 Wn. App. 25, 329 P.3d 91 (2014)..... 10

In re Estate of Lint,
135 Wn.2d 518, 957 P.2d 755 (1998)..... 4

Potelco v. Dep't of Labor & Indus.,
7 Wn. App. 2d 236, 433 P.3d 513 (2019)..... 17

Potelco, Inc. v. Dep't of Labor & Indus.,
194 Wn. App. 428, 377 P.3d 251 (2016)..... 4

Statutes

RCW 49.17.120(1)..... 2

RCW 49.17.180(4)..... 2, 17, 18

RCW 49.17.180(6)..... 15

Regulations

WAC 296-307-03930..... 3, 4, 7, 8, 9, 12

WAC 296-900-099..... 3

WAC 296-900-14010..... 17

WAC 296-900-14020..... 17

I. INTRODUCTION

Ignoring evidence does not make it disappear. The Board of Industrial Insurance Appeals found that Ostrom Mushroom Company failed to provide eyewash stations within 50 feet of the areas that it mixed pure Verticide with water, just as it had failed to do in 2014. When the Department of Labor and Industries inspector first visited Ostrom in 2016, two of Ostrom's managers told him that they did not provide eyewash stations within 50 feet of the areas where Ostrom mixed pure Verticide with water, and, when asked if they had any eyewash stations, volunteered that they had stored some portable emergency eyewash kits in a manager's office. The inspector also testified that he did not find any eyewash stations when he first inspected the worksite. The Department cited Ostrom for failing to abate the hazard because the violative condition it found in 2014—failing to provide necessary eyewash stations—was still present in 2016. The Board affirmed the Department, and substantial evidence supports the Board's findings.

Ignoring the inspector's testimony that two of Ostrom's managers conceded that they did not have any eyewash stations in place in 2016 and his testimony that he walked the site looking for eyewash stations and did not find one, Ostrom argues that the Board's finding that it failed to abate the hazard is unsupported by substantial evidence. Ostrom offers no

reason to reject the inspector's testimony that two of its managers conceded to him that they did not have eyewash stations in place, instead focusing only on its employees' later testimony that they did in fact have eyewash stations in place. But a reasonable trier of fact could believe what the managers told the inspector the first time—that Ostrom did not have any eyewash stations in place. Nor does Ostrom give a reason to discount the visual inspection. Either the manager's statements or the visual inspection alone provides substantial evidence for the Board's finding that Ostrom failed to abate the hazard.

This Court should reject the employer's arguments and uphold the Department's decision.

II. ARGUMENT

Under the Washington Industrial Safety and Health Act (WISHA), when the Department issues a citation, it gives a reasonable time to abate a violation. RCW 49.17.120(1). If there is a final and binding citation against an employer but the employer fails to correct the violation, RCW 49.17.180(4) authorizes the Department to penalize the employer for its failure to abate the hazard, and to issue a penalty of up to \$7,000 for each day that the violation went uncorrected. The Department issues another citation to the employer for failure to abate. Failure to abate means “[a] violation that was cited previously which the employer has not fixed.”

WAC 296-900-099. Here, Ostrom failed to abate the hazard because it did not fix the previous violation.

A. Substantial Evidence Supports the Board's Finding That Ostrom Failed To Abate the Hazard

The Board's finding that Ostrom failed to abate a previous WISHA citation by continuing to fail to provide emergency eyewash stations as WAC 296-307-03930 required is supported by substantial evidence and Ostrom fails to show otherwise. The Department issued a previous citation to Ostrom in 2014, which found that Ostrom failed to provide eyewash stations within 50 feet of all areas where a worker could be exposed to a corrosive chemical such as Verticide, and Ostrom did not appeal this citation. AR 7, 284-85, 406-14.¹ When the Department inspected Ostrom again in 2016, the Department found that Ostrom continued to fail to provide adequate eyewash stations, and thus had failed to abate the hazard. AR 202, 390-95.

Substantial evidence supports the Board's findings and Ostrom

¹ Violation 1-3 referenced the hazards posed by exposure to corrosive chemicals, stating:

The employer did not provide an emergency eyewash station where employees are exposed to corrosives, strong irritants, or toxic chemicals as required by this standard. Employees use chemicals such as Verticide Germicidal Detergent, Liquichlor, Bleach, Pounce 25 WP Insecticide, which require an emergency eyewash station. Employees are exposed to eye burns and corneal damage without an accessible eye wash station.

AR 410.

fails to show otherwise. Ostrom essentially ignores the evidence that supports the Board's findings, and instead focuses on evidence that it believes shows that it complied with WAC 296-307-03930. Resp't's Br. 8, 12-13. But Ostrom's argument turns the standard of review on its head: the issue is whether there is any evidence supporting the Board's findings, not whether other evidence might have supported different findings. *See Potelco, Inc. v. Dep't of Labor & Indus.*, 194 Wn. App. 428, 434, 377 P.3d 251 (2016) (court adopts Board's findings of fact if they are supported by substantial evidence); *see also Aviation West Corp. v. Dep't of Labor & Indus.*, 138 Wn.2d 413, 429, 980 P.2d 701 (1999) (explaining that the possibility of drawing different conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence). And as *In re Estate of Lint*, 135 Wn.2d 518, 531-32, 957 P.2d 755 (1998), explains, when a party is arguing that findings are unsupported by substantial evidence, it is "insufficient" to "merely" provide "a recitation of the facts in the light most favorable" to that party. That is what Ostrom did here, and its arguments therefore fail. Substantial evidence supports the Board's findings and this Court should uphold them. *See Potelco*, 194 Wn. App. at 434.

1. Ostrom's argument that the findings are unsupported by substantial evidence fails as it ignores the evidence that supports the Board's findings

The Board's finding that Ostrom failed to abate the previous violation by continuing to fail to provide adequate eyewash stations is supported by two key pieces of evidence that Ostrom ignores. AR 220, 231; *see* Resp't's Br. 12-16. These two items provide substantial support for the Board's findings, making Ostrom's failure to address them fatal to its arguments on appeal.

a. Ostrom managers told the inspector that Ostrom did not have eyewash stations

First, the WISHA inspector testified that at his initial conference with Ostrom in 2016, two of Ostrom's managers told him that Ostrom continued to use concentrated Verticide at the jobsite but did not have emergency eyewash stations within any of the areas where concentrated Verticide was mixed with water. AR 231. The inspector asked Ostrom's managers to show him any eyewash stations that they did have, and they showed him two, unused, emergency eyewash kits that were sitting in a manager's office. AR 220.

In essence, the managers confessed at the initial conference that Ostrom had failed to abate the hazard: they conceded that Ostrom continued to mix pure Verticide with water on the jobsite since 2014, yet

Ostrom had installed no eyewash stations within 50 feet of where they mixed Verticide with water. AR 220, 231. And they essentially conceded that they had purchased emergency eyewash kits but had neither installed those kits nor installed any other eyewash stations. *See* AR 220, 231. Based on this evidence alone, a reasonable trier of fact could conclude that, as of the inspector's opening conference in May 2016, Ostrom failed to abate the hazard for which it was cited in 2014.

Ostrom neither acknowledges this evidence nor offers any reasoned basis to disregard it, presumably because it cannot identify a reason to disregard it. *See* Resp't's Br. 12-16. The closest Ostrom comes to addressing this evidence is to note that its employees later testified at the Board that Ostrom did have eyewash stations in place well before the May 2016 conference. *See* Resp't's Br. 13. But the fact that Ostrom's witnesses later insisted that Ostrom did have eyewash stations in place does not mean that no reasonable person could believe that Ostrom's witnesses originally gave the inspector a different version of what had happened. And a reasonable person could believe that Ostrom's witnesses' first version of what happened when they spoke to the inspector at the opening conference was more accurate than what they later claimed during the Board hearing. Ostrom offers no reason why a reasonable person could not believe the inspector that Ostrom's managers conceded at the

May 2016 conference that Ostrom had installed no eyewash stations and thus had failed to abate the hazard.

b. In 2016, in the inspector's walk around, he did not see an eyewash station

Second, the inspector testified that, during the initial conference in May 2016, he investigated Ostrom's facility, and he did not find any eyewash stations that met the standard under WAC 296-307-03930. AR 200-04, 213. Besides the two, unused, emergency eyewash kits that were sitting in a manager's office, the only thing he found that even remotely resembled an eyewash station was the shower depicted in the photograph admitted as Exhibit 4, which both the inspector and Ostrom's managers testified was not a valid eyewash station. *See* AR 215, 220, 379, 402, 459. When the inspector returned to Ostrom in July 2016, he found one eyewash station, a photograph of which was admitted as Exhibit 5. AR 215-17, 403. And the inspector testified that Ostrom's managers showed him this eyewash station during his second visit to show him that Ostrom had abated the hazard of not having eyewash stations present. AR 215-17. This supports the inference that the eyewash station shown in Exhibit 5 was not present in May 2016 and that Ostrom installed it after that date. The inspector found no other eyewash stations in July 2016.

Based on this testimony alone, a reasonable person could find that

Ostrom had no eyewash stations installed as of May 2016, and only one eyewash station installed as of July 2016. This is important because Ostrom's managers testified that Ostrom had at least *two* areas at the jobsite at which pure Verticide was mixed with water. AR 356-57, 381-82, 421, 427. So if Ostrom had no eyewash stations as of May 2016, and only one eyewash station in July 2016, it did not comply with WAC 296-307-03930 as of either of those dates, because that regulation required Ostrom to have emergency eyewash stations within 50 feet of all locations where a worker could be exposed to pure Verticide. As a result, the inspector's testimony that he found no eyewash stations in May 2016, and only one in July 2016, provides substantial evidence that Ostrom failed to abate the hazard as of 2016, even leaving aside the inspector's other testimony. AR 213, 215-17.

Again, Ostrom fails to explain why a reasonable trier of fact could not rely on this evidence to find that it failed to abate the hazard as of May 2016. Ostrom misleadingly suggests that the inspector found the eyewash station that is depicted in Exhibit 5 during his initial visit in May 2016. Resp't's Br. 5. But the inspector testified that he found this eyewash station during the *second* visit, in July 2016, not during his initial visit in May 2016. AR 215-17. And even assuming that the eyewash station shown in Exhibit 5 was present as of the initial visit in May 2016,

this would still not show that Ostrom complied with WAC 296-307-03930, because this would mean that Ostrom only had one eyewash station in place even though it had at least two areas at its jobsite that required eyewash stations. AR 335, 345-46, 356-57, 381-82, 421, 427.

2. Ostrom's argument that it purchased the eyewash kits to address a different hazard—paraformaldehyde—fails to show that the Board's findings are unsupported by substantial evidence

Ostrom's assertion that it purchased the emergency eyewash kits to address paraformaldehyde rather than Verticide does not establish that the Board's findings are unsupported by substantial evidence. To explain why the emergency eyewash kits were sitting unused in the office of one of Ostrom's managers at the time of the May 2016 inspection, Ostrom posits that it purchased the eyewash kits for the sole purpose of abating a different hazard—paraformaldehyde—and that it did not need to use the kits because it decided to discontinue the use of paraformaldehyde. Resp't's Br. 12-13. Ostrom argues that the fact that the kits were sitting unopened in its manager's office therefore does not establish that it failed to abate the hazard. This argument fails for two reasons.

First, regardless of why the kits were sitting unused in the manager's office in May 2016, the inspector testified both that Ostrom's managers conceded that Ostrom did not have any eyewash stations present

in the areas where it mixed pure Verticide with water and that his inspection of the jobsite showed that there were no eyewash stations in place of any kind at the time of that visit. AR 213, 220, 231. If this testimony is accepted as true, as it must be under substantial evidence review, then Ostrom failed to abate the hazard. *See Frank Coluccio Const. Co. v. Dep't of Labor & Indus.*, 181 Wn. App. 25, 35, 329 P.3d 91 (2014) (Board's findings are conclusive if substantial evidence supports them). And it therefore does not matter why the emergency eyewash kits were sitting unused in the manager's office in May 2016.

Second, substantial evidence shows that Ostrom purchased the emergency eyewash kits to abate the hazard associated with Verticide, not paraformaldehyde. AR 268-70, 392, 410. The 2016 citation found that Ostrom failed to abate a specific violation in 2014—violation 1-3—and violation 1-3 was issued based on Verticide, not paraformaldehyde. AR 392, 410. Indeed, violation 1-3 does not mention paraformaldehyde. AR 392. The Department employee who was involved in the 2014 citation testified that she marked violation 1-3 as abated based on Ostrom's purchase of the emergency eyewash kits and Ostrom's representation that it would install the kits in the necessary locations. AR 268-70. Based on this testimony, a reasonable trier of fact could infer that Ostrom purchased the eyewash kits to abate the hazard associated with Verticide, not

paraformaldehyde. And the fact that Ostrom never used those eyewash kits—as Ostrom told the Department that it would following the 2014 citation—in turn supports a finding that Ostrom failed to abate the hazard.

But even if Ostrom’s explanation for why it purchased the emergency eyewash kits—but decided to not use them—is correct, the Board’s finding that it failed to abate the hazard is supported by substantial evidence, as the record amply supports a finding that Ostrom had no eyewash stations of any kind in place within 50 feet of the areas where it mixed pure Verticide with water. AR 213, 215-17, 220, 231. Ostrom’s suggestion to the contrary is meritless.

3. Ostrom’s attacks on the Board decision lack merit

Ostrom fails to address the key evidence supporting the Board’s finding and instead offers five reasons why it believes the Board’s decision was incorrect, but none of those contentions is legally supportable. Resp’t’s Br. 12-16.

First, Ostrom argues that the Board relied on evidence that Ostrom stored Verticide in drums in a storage area and that the Board wrongly believed that this meant that eyewash stations needed to be within 50 feet of the storage area. Resp’t’s Br. 14. But nowhere did the Board suggest in its decision that it believed that eyewash stations needed to be within 50 feet of the storage area. *See* CP 5-9. Moreover, Ostrom’s argument fails

because it is undisputed that Ostrom mixed pure Verticide with water at at least two locations (see AR 335, 345-46, 356-57, 381-82, 421, 427) and there is substantial evidence that Ostrom did not have any eyewash stations as of May 2016 (see AR 213, 220, 231). So even if the Board incorrectly believed that an eyewash station needed to be within 50 feet of the storage area, the Board's finding that Ostrom failed to provide adequate eyewash stations was still supported by substantial evidence.

Second, Ostrom incorrectly claims that the Department contends that the shower depicted in Exhibit 4, which is not an adequate eyewash station, was within 50 feet of an area where Verticide is mixed with water. Resp't's Br. 14-15. But the Department's argument is the opposite of this: the Department's opening brief noted that the shower depicted in Exhibit 4 is not located within 50 feet of an area where pure Verticide is mixed with water, and so the shower depicted in that exhibit could not satisfy the requirements of WAC 296-307-03930. Appellant's Br. 9. And nothing in the Board's decision suggests that it incorrectly believed that the shower depicted in Exhibit 4 was located within 50 feet of an area where pure Verticide is mixed with water. And even if the Board did, incorrectly, believe such a thing, that would still not mean that the Board's finding was unsupported by substantial evidence, as there is substantial evidence that Ostrom did not have any eyewash stations in place as of May 2016.

Third, Ostrom incorrectly claims that the Board believed that both diluted Verticide and pure Verticide posed a hazard requiring the use of eyewash stations, and argues that the Board's decision is incorrect because Verticide is only hazardous in its concentrated form. Resp't's Br. 15. But nothing in the Board's decision suggests that it believed that diluted Verticide required the use of eyewash stations. *See* CP 5-9. And even assuming the Board did believe that, it is undisputed that eyewash stations are required for Verticide in its concentrated form, and there is substantial evidence that Ostrom did not have any eyewash stations in place as of May 2016.

Fourth, Ostrom argues that the Board speculated that Ostrom would have appealed the 2014 citation if it had emergency eyewash stations in place at that time. Resp't's Br. 15-16. The Board did make that observation, but Ostrom fails to show that no reasonable person could interpret Ostrom's failure to appeal the 2014 citation the way that the Board did. *See* CP 6. And even if the Board's comment were speculative, the Board's ultimate finding that Ostrom failed to provide adequate emergency eyewash stations was still supported by substantial evidence based on the inspector's testimony that Ostrom's managers conceded at the initial conference that it had no eyewash stations and the inspector's

testimony that he did not find any eyewash stations when he searched the jobsite. AR 213, 220, 231.

Finally, Ostrom argues that the testimony of one of the managers, Copeland-Gordon, does not show that Ostrom had a third mixing station besides the two, undisputed, mixing stations. Resp't's Br. 16. But while it is true that Copeland-Gordon acknowledged that another Ostrom employee might have better knowledge of where the mixing stations were, she still testified that there was a third mixing station. AR 379, 386. A reasonable trier of fact could believe her testimony that there was a third mixing station, despite her desire to defer to the other witness. And in any event, even if Copeland-Gordon's testimony does not establish that a third mixing station was present at the jobsite, there is substantial evidence that Ostrom did not have any eyewash stations as of May 2016 and so did not abate the hazard no matter if it had three mixing stations at the jobsite or only two.

B. Substantial Evidence Shows That Ostrom Had Both Actual and Constructive Knowledge of the Violative Working Conditions

There is substantial evidence that Ostrom had both actual and constructive knowledge of the violative working conditions because Ostrom's managers admitted that they knew that Verticide was used at the jobsite and that they knew that it is a chemical that requires an emergency

eyewash station. AR 339, 457; *see* RCW 49.17.180(6). The Department's burden is to show that the employer knew, or could have known by exercising reasonable diligence, about the hazardous employment condition, not that it knew about a specific incident or workplace injury. *See Erection Co. Inc. v. Dep't of Labor & Indus.*, 160 Wn. App. 194, 206-07, 248 P.3d 1085 (2011). The managers' statements to the inspector at the May 2016 conference show that they knew that Ostrom did not have any eyewash stations in place within 50 feet of the areas where Ostrom mixed pure Verticide with water, so Ostrom had actual knowledge of the violative condition. *See* AR 331.

And even leaving this evidence aside, Ostrom had constructive knowledge of the violative working condition. Ostrom knew that its workers mixed pure Verticide with water at at least two locations on the jobsite, and it could have readily determined whether any eyewash stations were present within 50 feet of those mixing sites or not through a simple inspection of the jobsite. AR 335, 345-46, 356-57, 381-82, 421, 427. If an employer could have known of the violative working condition through the exercise of reasonable diligence, the employer has constructive knowledge of the violation. *Erection Co.*, 160 Wn. App. at 202-03. A determination regarding "reasonable diligence involves several factors, including an employer's obligation to inspect the work area, to anticipate

hazards to which employees may be exposed, and to take measures to prevent the occurrence.” *Erection Co.*, 160 Wn. App. at 206-07 (internal citation omitted). Applying those factors here, Ostrom could have known of the failure to provide adequate eyewash stations if it inspected its worksite, as it was obligated to do. *See id.*

Ostrom argues that it did not know about the violative working condition because it did not know that it needed to use emergency eyewash kits even if it had abated the hazard by installing permanent eyewash stations. Resp’t’s Br. 10-11. But this misstates the legal standard, the Department’s position in the case, and the record. The Department cited Ostrom because Ostrom had no eyewash stations present at the jobsite within 50 feet of the areas where there was exposure to pure Verticide, not because it believed Ostrom needed to install *both* a temporary eyewash station and a permanent one wherever pure Verticide was used. And substantial evidence shows both that Ostrom did not have any eyewash stations in place at the time of the initial visit in May 2016 and that it had both actual and constructive knowledge of that fact. AR 213, 215-17, 220, 231, 335, 345-46, 356-57, 381-82, 421, 427.

C. The Department’s Penalty Calculation Was Correct and It Exercised Reasonable Discretion When It Multiplied the Base Penalty by Ten

In a WISHA case, the courts review the calculation of a penalty for abuse of discretion. *Potelco v. Dep't of Labor & Indus.*, 7 Wn. App. 2d 236, 252, 433 P.3d 513 (2019). The Department properly calculated the penalty here based on the severity of the violation, the probability of harm, and the considerable length of time that Ostrom failed to abate the hazard. WAC 296-900-14010 sets forth the guidelines for determining penalties for WISHA violations. Under this regulation, the Department calculates the base penalty by determining a severity and a probability factor number, both of which are on a scale of one to three, with three being the highest value. WAC 296-900-14010. The Department calculated the base penalty based on each factor, and Ostrom does not contend that the Department's determination about any of those factors was incorrect. AR 239-40.

And contrary to Ostrom's argument (at Resp't's Br. 18), the Department exercised reasonable discretion in multiplying the base penalty by 10 given the very large period of time that Ostrom failed to abate the hazard and the very serious injuries that could result if a worker was exposed to corrosive chemicals without a nearby eyewash station.

In a failure to abate case, RCW 49.17.180(4) and WAC 296-900-14020 authorize the Department to multiply the base penalty amount by the number of days that the violation went uncorrected, with a minimum

of five days. The only limit to the Department's authority under this rule is the statutory cap that the penalty cannot be more than \$7,000 per day. RCW 49.17.180(4). The inspector explained that he used a multiplier of 10 because multiplying the penalty by the total number of days that the violation went unabated would have created an excessive penalty, which shows that the Department exercised reasonable discretion in calculating the penalty. AR 240. Ostrom argues that the Department should not have multiplied the penalty by 10, and should have instead picked a multiplier based on the individual facts of the case. Resp't's Br. 18. But Ostrom fails to articulate what facts the Department should have considered and it also fails to explain how the Department would pick a multiplier based on those facts. *See* Resp't's Br. 18. Given that the violation went uncorrected for over a year and the violation involved significant hazards, it was reasonable for the Department to multiply the base penalty by 10, and Ostrom does not show otherwise.

III. CONCLUSION

Substantial evidence shows that Ostrom failed to abate a hazard by failing to provide eyewash stations within 50 feet of all areas where its workers could be exposed to undiluted Verticide. Ostrom's arguments to the contrary are based on either ignoring substantial evidence or mischaracterizing the issues on appeal. The superior court erred when it

reversed the Board's decision and this Court should reverse and uphold
the Board and the Department.

RESPECTFULLY SUBMITTED this 1 day of October, 2019.

ROBERT W. FERGUSON
Attorney General



STEVE VINYARD
Assistant Attorney General
WSBA #29737
Office Id. #91022
Labor and Industries Division
7141 Cleanwater Drive SW
P.O. Box 40121
Olympia, WA 98504-0121
(360) 586-7715

NO. 53180-1-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

OSTROM MUSHROOM FARM
COMPANY,

Respondent,

v.

WASHINGTON STATE
DEPARTMENT OF LABOR
AND INDUSTRIES,

Appellant.

DECLARATION OF
SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the state of Washington, declares that on the below date, I served the Reply Brief, Department of Labor and Industries and this Declaration of Service in the below described manner:

E-Filing via Washington State Appellate Courts Portal:

Derek Byrne
Court Clerk/Administrator
Court of Appeals, Division II

E-Mail via Washington State Appellate Courts Portal:

Aaron Owada
Owada Law, P.C.
aaron.owada@owadalaw.net

DATED this 1st day of October, 2019, at Tumwater, Washington.



AUTUMN MARSHALL
Legal Assistant 3
(360) 586-7737

ATTORNEY GENERALS' OFFICE, L&I DIVISION, OLYMPIA

October 01, 2019 - 2:14 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53180-1
Appellate Court Case Title: Ostrom Mushroom Farm Co., Respondent v. Dept of L & I, State of WA,
Appellant
Superior Court Case Number: 18-2-02047-3

The following documents have been uploaded:

- 531801_Briefs_20191001141227D2922830_3886.pdf
This File Contains:
Briefs - Appellants Reply
The Original File Name was DeptReplyBr.pdf

A copy of the uploaded files will be sent to:

- aaron.owada@owadalaw.net

Comments:

Sender Name: Autumn Marshall - Email: autumn.marshall@atg.wa.gov

Filing on Behalf of: Steve Vinyard - Email: steve.vinyard@atg.wa.gov (Alternate Email: LIOlyCEC@atg.wa.gov)

Address:
P.O. Box 40121
Olympia, WA, 98504-0121
Phone: (360) 586-7707

Note: The Filing Id is 20191001141227D2922830