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NEVADA OCCUPATIONAL SAFETY AND HEALTH
REVIEW BOARD

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CHIEF ADMINISTRATIVE OFFICER
OF THE OCCUPATIONAL SAFETY
AND HEALTH ADMINISTRATION OF
THE DIVISION OF INDUSTRIAL
RELATIONS OF THE DEPARTMENT
OF BUSINESS AND INDUSTRY, STATE
OF NEVADA,

Complainant,

vs.

WALMART INC., dba WALMART
SUPERCENTER #1560,

Respondent.

Docket No. LV 23-XXXX

Inspection No. 1576433

FILED
MAR 29 2024
OSH REVIEW BOARD
BY *H. Kennedy*

ORDER GRANTING THE STATE'S MOTION TO DISMISS

The above captioned matter came on for hearing on the motion of the State of Nevada, complainant, to dismiss the contest in this case on the grounds that the respondent failed to give a timely notice of contest as required under NRS 618.475(1) which provides as follows:

If, after an inspection or investigation, the Division issues a citation under the provisions of this chapter, [NRS 618.475(1)] it shall ... notify the employer by certified mail of the penalty, if any, proposed to be assessed under this chapter and that the employer has 30 calendar days within which to notify the Division that the employer wishes to contest the citation or proposed assessment of penalty. If, within 30 calendar days from the receipt of the notice issued by the Division, the employer fails to notify the Division that the employer intends to contest the citation or proposed assessment of penalty ... the citation and assessment as proposed shall be deemed a final order of the review board and not subject to review by any court or agency NRS 618.478(1).

There is no dispute that the citation provided for above was delivered by mail to the Respondent on July 8, 2022. There is also no dispute that the Respondent failed to meet the 30

1 day deadline of NRS 618.475(1), when notifying the Division of the employer's intent to contest
2 the citation or proposed assessment of penalty. According to the State, therefore, the citation and
3 assessment as proposed must be imposed and be deemed a final Order, not subject to review by
4 any court or agency, because, according to the Division, the time frame of NRS 618.475(1) is
5 jurisdictional and not subject to any tolling.

6 Respondent opposes the motion to dismiss on the grounds that the deadline for giving
7 notice under NRS 618.475(1) is not jurisdictional but is, therefore, subject to equitable tolling
8 and excusable neglect according to Rule 4, NRCPC. Respondent also argues in its opposition to
9 the motion to dismiss that excusable or equitable tolling principles would mitigate against the 30
10 day deadline to permit a case to proceed if a finding of excusable neglect or equitable tolling is
11 shown by the respondent.


12 Whether or not the 30 day time limit of NRS 618.475(1) is jurisdictional, the Board finds
13 that respondent failed to make a showing of a excusable neglect or equitable tolling, which
14 would justify the late filing of its notice of contest in this matter.

15 GOOD CAUSE, therefore, appearing, IT IS HEREBY ORDERED, that the Division's
16 motion to dismiss is hereby granted as there was no showing of excusable neglect or equitable
17 tolling, to justify a late filing of the notice of contest in this matter. The citation and assessment
18 as proposed are the Final Order of this matter. It is so ORDERED.

19 This Order may be served by e-mail.

20 Dated this 29th day of March, 2023.

NEVADA OCCUPATIONAL SAFETY AND
HEALTH REVIEW BOARD

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23 By: 

Rodd Weber, Chairman


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CERTIFICATE OF SERVICE

I certify that I am an employee of the Law Offices of Charles R. Zeh, Esq., and that on this date I served the attached document, *Order Granting the State's Motion to Dismiss*, on those parties identified below e-mailing the same to the following e-mail addresses:

Salli Ortiz, Esq. - sortiz@dir.nv.gov
Ronald W. Taylor, Esq. - RWTaylor@venable.com

Dated this 29th day of March, 2024.



Employee of
The Law Offices of Charles R. Zeh, Esq.

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