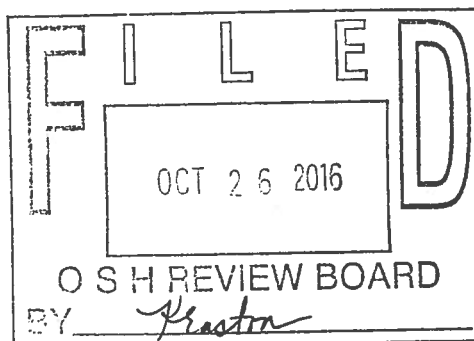


1 NEVADA OCCUPATIONAL SAFETY AND HEALTH
2 REVIEW BOARD
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5 CHIEF ADMINISTRATIVE OFFICER OF
6 THE OCCUPATIONAL SAFETY AND
7 HEALTH ADMINISTRATION OF THE
8 DIVISION OF INDUSTRIAL RELATIONS
9 OF THE DEPARTMENT OF BUSINESS
10 AND INDUSTRY, STATE OF NEVADA,

Docket No. LV 16-1853



Complainant,

vs.

10 EFI GLOBAL, INC.,

11 Respondent,
12

13 **DECISION**

14 This matter having come before the **NEVADA OCCUPATIONAL SAFETY AND**
15 **HEALTH REVIEW BOARD** at a hearing commenced on the 14th day of September
16 2016, in furtherance of notice duly provided according to law, MS. SALLI
17 ORTIZ, ESQ., counsel appearing on behalf of the Complainant, **Chief**
18 **Administrative Officer of the Occupational Safety and Health**
19 **Administration, Division of Industrial Relations** (OSHA); and MR. D.
20 JASON FERRIS, ESQ., appearing on behalf of Respondent, **EFI Global, Inc.**,
21 the **NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD** finds as follows:

22 Jurisdiction in this matter has been conferred in accordance with
23 Chapter 618 of the Nevada Revised Statutes.

24 The complaint filed by the OSHA sets forth allegations of violation
25 of the regulatory provisions of the Nevada Administrative Code as
26 referenced in Exhibit "A", attached thereto.

27 Citation 1, Item 1, charges a violation of NAC 618.927(1) governing
28 asbestos abatement licensing which provides:

1 NAC 618.927(1) Consultants: Licensing requirements; fee. (NRS
2 618.295, 618.760, 618.765, 618.770)

3 1. A person shall not provide any services as a consultant
4 within the State without first obtaining a license from the
5 Division.

6 FACTS

7 NVOSHA alleged that on December 8, 2015, EFI employee Joshua White
8 collected building samples of suspected asbestos containing materials
9 for testing at 2038 Juana Vista Street in Las Vegas, Nevada. NAC
10 618.928 describes the services performed by Mr. White as those of a
11 "consultant" which requires a Nevada license under NAC 618.927(1). Mr.
12 White did not have a Nevada license to perform services as a consultant.
13 Mr. White was paid as an inspector to collect samples of building
14 material suspected to contain asbestos for testing. He was not
15 accredited as an inspector in Nevada. NAC 618.931 requires any person
16 accredited as an inspector be a licensed consultant. NAC 618.882
17 defines a licensed consultant as one who is accredited as an inspector.

18 The violation was classified as Regulatory and penalty proposed in
19 the sum of \$300.00.

20 Complainant offered Exhibits 1 through 3, pages 1 through 67 for
21 admission into evidence. Exhibits 1 and 2 were admitted without
22 objections. Exhibit 3 was subject of objection for lack of foundation
23 but reserved for argument to the time of presentation.

24 Complainant presented documentary and testimonial evidence through
25 Ms. Kerry Sanchez an Industrial Hygienist (IH). Ms. Sanchez testified
26 an inspection was conducted from March 17, 2016 through April 13, 2016
27 pursuant to NRS 618.375 as the result of reported code violations at a
28 home residence where respondent employee Joshua White performed sample-
collecting of suspected asbestos materials. She confirmed Mr. White is

1 employed by EFI Global, Inc., the respondent herein.

2 Ms. Sanchez testified and referenced Exhibit 1, page 8 as to the
3 opening conference conducted telephonically on March 17, 2016 with Mr.
4 Dennis Ironi, Vice President of the respondent. Mr. Ironi granted IH
5 Sanchez permission to proceed with the inspection. After determining the
6 employer had no previous OSHA inspections over the past five years, Ms.
7 Sanchez reviewed the information and materials provided. She referenced
8 Exhibit 3, page 66 as documents exchanged during the opening conference
9 by email while conducting the interview telephonically. The Exhibit
10 identified the materials reported as collected at the premises during
11 the EFI inspection. She confirmed the tested asbestos material results
12 reported for the samples collected by Mr. White. She referenced the test
13 report at Exhibit 3, pages 62 and 63, to include her handwritten notes
14 made during the course of the inspection.

15 IH Sanchez testified that respondent admissions of the reported
16 facts telephonically and in documents provided to OSHEs demonstrated
17 violation of NAC 618.927. Employee White was not licensed as a
18 consultant nor an accredited inspector in the state of Nevada while
19 engaged in collecting samples of suspected asbestos containing
20 materials. Ms. Sanchez testified the written exchanges at Exhibit 1
21 demonstrated employer knowledge of the work being conducted by Mr. White
22 and lack of compliance with the Nevada licensure requirements.

23 IH Sanchez identified Exhibit 3, letter F, page 59 and testified
24 the closing conference included her advisories to Mr. Ironi of the
25 particular violative conditions regulated by the Nevada Administrative
26 Code. Ms. Sanchez referenced Exhibit 3, page 63 and read the written
27 information into the record explaining why the citation was issued. She
28 referenced the correspondence from respondent and testified it confirmed

1 Mr. White ". . . collected asbestos for testing . . ." She testified
2 the correspondence was signed by Mr. White as identified at Exhibit 3,
3 page 64. Exhibit 3 was admitted in evidence without objection.

4 IH Sanchez explained in her testimony that anyone who ". . .
5 inspects or touches asbestos must be licensed in Nevada . . ." She
6 further testified employer knowledge was established from the exchanges
7 with Mr. Ironi, admissions of Mr. White and the confirming
8 correspondence in the admitted Exhibits from respondent EFI Global. Ms.
9 Sanchez testified the documents show the employer knew a Nevada license
10 was required for the work performed and that Mr. White did not possess
11 one. She also testified that EFI Global representative Ironi informed
12 her the company position was that Mr. White performed services not
13 requiring a Nevada license.

14 On redirect examination IH Sanchez described the Nevada regulatory
15 scheme for asbestos abatement in NAC 618. She noted NAC 618.850 and the
16 included definitions, descriptions and requirements for the regulated
17 work. She testified that NAC 618.882 defines a licensed consultant as
18 any person involved with providing consultant services regarding the
19 control of asbestos ". . . **and** who is accredited as an inspector . . ."
20 She further testified on the disciplines regulated under the NAC
21 sections. Ms. Sanchez described the work of Mr. White at the site to
22 come within the specific license requirements NAC 618.927(1) because he
23 was performing consultant services defined in NAC 618.928 within Nevada
24 without a license. She described the criteria for licensure in Nevada
25 and explained the various provisions. Ms. Sanchez testified in response
26 to a specific question that to be in violation of the subject licensing
27 requirements one does not have to perform actual "testing" of asbestos,
28 but rather anyone who ". . . works, touches . . . or potentially

1 contacts these materials . . ." as referenced in the NAC 618 asbestos
2 abatement regulations requires Nevada licensure as a consultant.

3 On cross-examination Ms. Sanchez testified referencing exhibits in
4 evidence and specifically the worksheet of violations at Exhibit 1,
5 pages 15 and 16. She testified 2% chrysotile asbestos was found as
6 tested in the material collected by Mr. White referenced in the lab
7 reports provided to respondent. She noted the employer knowledge
8 element for proof of a violation at page 16, number 23 of Exhibit 1.
9 IH Sanchez testified the documentary evidence obtained provided ". . .
10 in a letter sent to Traveler's Insurance, the company that requested the
11 sampling, Mr. White wrote that if any other asbestos containing
12 materials are identified during renovation, EFI Global recommends they
13 be sampled by a Nevada-licensed asbestos inspector. The letter was
14 reviewed and signed off by Scott Meyers, Certified Asbestos Consultant
15 for EFI Global." She summarized the evidence and testified the letter
16 established the ". . . employer was . . . aware of the regulated work
17 . . . and proof of employer knowledge." She testified the facts in
18 evidence showed Mr. White ". . . collected samples of suspected asbestos
19 without a license and was paid as an inspector to collect materials
20"

21 On continued cross-examination counsel questioned whether NAC
22 618.928 requires licensure only if an employee performs **all** of the
23 enumerated services. IH Sanchez answered no, they are not all required
24 and referenced the NAC regulations at Exhibit 1, page 9. Ms. Sanchez
25 testified Mr. White was specifically cited under NAC 618.927(1) for
26 conducting regulated services as a consultant without the required
27 appropriate licensure.

28 Complainant presented witness testimony from Mr. John Hutchison who

1 identified himself as an (Industrial Hygienist) Supervisor. He
2 testified as to his background, the number of inspections conducted, his
3 supervision of the subject case and approval for issuance of citation.

4 IH Hutchison testified at Exhibit 1, page 15 on the **applicability**
5 of NAC 618.927(1). He testified the admitted facts were that Mr. White
6 ". . . collected samples of suspected asbestos without a Nevada license
7" He testified the undisputed facts showed Mr. White was in
8 violation of NAC so the regulation was determined applicable. Mr.
9 Hutchison testified that while the fact Mr. White held a California
10 inspector license would be assistive for reciprocity considerations, it
11 did not negate the need for Nevada licensure. He testified that EFI
12 also had **constructive knowledge** of the required Nevada license based
13 upon correspondence from Mr. White to the insurance company, as
14 referenced in Exhibit 1, page 16. It referenced the ultimate
15 requirements of obtaining testing results from a ". . . **licensed Nevada**
16 **consultant.**" He further testified that constructive knowledge based
17 upon the correspondence completed the proof elements required for
18 finding a violation.

19 On continued direct examination Mr. Hutchison testified on the
20 basis for **classification** and **appropriateness of the penalties** under the
21 OSHES enforcement manual. He noted the dollar penalty sum had been
22 reduced due to the small size of the company and no previous violations.
23 He testified the answer to the complaint at page 37 alleging lack of
24 **applicability** because the site was a personal residence not a commercial
25 operation was erroneous. Nevada OSHA has jurisdiction under NRS and NAC
26 Chapter 618 over ". . . all places of employment, private or otherwise
27"

28 Mr. Hutchison testified in response to the potential for an

1 **employee misconduct** defense. He explained that four proof elements are
2 required yet none were presented to meet the legal requirements. He
3 listed the elements to include the **establishment of employer work rules**
4 **to prevent violations, steps taken to discover violations, adequate**
5 **communication of the rules, and effective enforcement of the rules**
6 including discipline. He testified there was no evidence submitted to
7 OSHES to support the defense.

8 On cross-examination Mr. Hutchison testified in response to
9 questioning on the elements of proof for an employee misconduct defense.
10 He testified on the relationship of the regulatory scheme under NAC 618
11 specifically referencing 618.928, 618.882, and 618.879. He explained
12 these provisions reference the type services provided by an inspector
13 and testified ". . . to be an inspector . . . you need to be a
14 consultant . . . and that requires licensure in the state of Nevada."
15 He further testified that notwithstanding Mr. White being a licensed
16 inspector in California, Nevada law requires licensure in this state.

17 On challenges of proof for exposure to any hazard, IH Hutchison
18 testified that while there was tested evidence of asbestos reported
19 found, **actual** exposure is not required for this violation. ". . .
20 Anyone merely **conducting consulting services** on . . . **suspected** asbestos
21 materials must be licensed . . . to be able to . . . recognize hazards
22 . . . and therefore hazard exposure not limited . . . to resultant harm
23 that may or may not have occurred . . . and did not eliminate the
24 requirement for a Nevada license . . ."

25 At the conclusion of presentation of evidence and testimony
26 complainant and respondent counsel presented closing argument.

27 The complainant asserted there was no question Mr. White was not
28 a licensed consultant in the state of Nevada and the facts regarding

1 same were undisputed. It was also undisputed that he was collecting
2 samples of **suspected** asbestos containing materials in Las Vegas, Nevada,
3 and providing services regulated for licensed consultants. The admitted
4 purpose of the collection was to obtain lab test results for asbestos.
5 Counsel referenced the NAC asbestos abatement requirements and inter-
6 relationships of same to regulate employee exposure to potential
7 hazardous conditions in the state of Nevada. She argued that
8 appropriate licensure assures training and qualifications for employees
9 to safely work with suspected asbestos materials. Counsel argued the
10 documentation in evidence demonstrates employer knowledge of the Nevada
11 license requirement by virtue of the contents of the correspondence.
12 It identified the services being performed and the ultimate requirements
13 for testing by appropriate licensed individuals. Counsel argued the
14 established occupational safety and health law requires ". . . an
15 employer need have **only knowledge** of the **conditions** under regulatory
16 control and not the actual violative facts . . ."

17 Counsel argued the preponderant evidence confirmed EFI a
18 sophisticated asbestos abatement employer knew, and/or should have known
19 with the exercise of reasonable diligence, the requirements for Nevada
20 licensed people to conduct the described work. Counsel asserted that
21 NAC 618.928 is not merely a definition but a specific regulation and
22 similar to a specific standard for citation as a violation. The NAC
23 provisions read together portray the statutory framework and legislative
24 intent. She referenced related sections under the NAC legislative
25 scheme, and identified the duties of an **inspector** in the overall
26 descriptive of services regulated for **consultants** performing work as
27 provided by Mr. White. Counsel concluded closing argument asserting
28 that despite the affirmative defenses raised in the answer there was no

1 preponderant proof presented as evidence to establish the affirmative
2 defenses under established occupational safety and health law.

3 Respondent presented closing argument in defense of the citation.
4 Counsel argued that **definitions** are not lawful bases for citation as
5 violations; and the cited NAC reference not the specific criteria for
6 a finding of violation. The only citation charges were at NAC
7 618.927(1) and ". . . that's just a definition so an improper basis for
8 citation . . . (V)iolations cannot be based upon . . . **definitions**
9" Counsel argued the employee conduct alleged was cited as a
10 regulatory violation so must be ". . . **specifically** cited and proven
11" He referenced NAC 618.928 on consulting services and argued
12 ". . . that's the referenced conduct." Counsel asserted Exhibit 1, page
13 16 provides what Mr. White did, which was only taking samples for
14 testing. He argued 618.928 requires ". . . by use of the word **and** to
15 mean that to find Mr. White in violation he had to do **all** acts
16 enumerated . . . and to what extent . . . and prepare a report . . ."
17 Accordingly, since there is no evidence Mr. White performed all three
18 there can be no violation.

19 Counsel additionally argued ". . . there was no actual condition
20 of hazard **exposure**" He asserted Mr. White was already a trained
21 California licensee and merely needed a ". . . piece of paper . . . so
22 (the Board) is not looking at any real exposure to a hazardous condition
23 . . . just something needed therefore . . . the element of exposure not
24 established to satisfy . . . the proof needed for . . . a finding of
25 violation."

26 In reviewing the facts, testimony, exhibits and arguments of
27 counsel, the Board is required to measure same against the established
28 applicable law developed under the Occupational Safety and Health Act

1 as adopted in the State of Nevada.

2 **APPLICABLE LAW**

3 In all proceedings commenced by the filing of a
4 notice of contest, the **burden of proof rests with
the Administrator.** (See NAC 618.788(1)).

5 All facts forming the basis of a complaint must be
6 proved by a **preponderance of the evidence.** See
7 *Armor Elevator Co.*, 1 OSHC 1409, 1973-1974 OSHD
8 ¶16,958 (1973). (Emphasis added)

9 NRS 233B(2) "**Preponderance of evidence**" means
10 evidence that enables a trier of fact to determine
11 that the existence of the contested fact is more
12 probable than the nonexistence of the contested
13 fact.

14 NAC 618.788 (NRS 618.295) In all proceedings
15 commenced by the filing of a notice of contest, the
16 **burden of proof rests with the Chief.** (Emphasis
17 added)

18 To **prove a violation** . . . complainant must
19 establish (1) the **applicability of the standard
20 (regulation), (2) the existence of noncomplying
21 conditions, (3) employee exposure or access, and
22 (4) that the employer knew or with the exercise of
23 reasonable diligence could have known of the
24 violative condition.** See *Belger Cartage Service,
25 Inc.*, 79 OSAHRC 16/B4, 7 BNA OSHC 1233, 1235, 1979
26 CCH OSHD ¶23,400, p.28,373 (No. 76-1948, 1979);
27 *Harvey Workover, Inc.*, 79 OSAHRC 72/D5, 7 BNA OSHC
28 1687, 1688-90, 1979 CCH OSHD 23,830, pp. 28,908-10
(No. 76-1408, 1979); *American Wrecking Corp. v.
Secretary of Labor*, 351 F.3d 1254, 1261 (D.C. Cir.
2003). (Emphasis added)

A respondent may rebut allegations by showing:

1. The standard was inapplicable to the situation at issue;
2. The situation was in compliance; or lack of access to a hazard. See *Anning-Johnson Co.*, 4 OSHC 1193, 1975-1976 OSHD ¶ 20,690 (1976).

NAC 618.927 **Consultants: Licensing requirements;**
fee. (NRS 618.295, 618.760, 618.765, 618.770) 1. **A
person shall not provide any services as a
consultant within the State without first obtaining
a license from the Division.** 2. To obtain a
license as a consultant: (a) An application must be
submitted to the Enforcement Section on a form

1 provided by the Enforcement Section. (b) The
2 applicant must pay a license fee of \$100. (Emphasis
added)

3 NAC 618.928 **Consultants: Services** which may be
4 provided. (NRS 618.295, 618.760, 618.765) **Services**
5 **provided by a consultant include, but are not**
6 **limited to: 1. Performing surveys to determine if**
7 **materials containing asbestos are present** and to
8 what extent they are present, and preparing an
9 evaluation report. 2. Recommending conceptual
10 methods of asbestos abatement. 3. Preparing
11 specifications for asbestos abatement. 4. Managing
12 or coordinating projects for the abatement of
13 asbestos on behalf of his or her clients. 5.
14 Providing professional technical advice to
15 contractors regarding the protection of the health
16 of abatement workers and other persons potentially
17 exposed to asbestos during and after the activities
18 for the abatement of asbestos. (Emphasis added)

11 NAC 618.882 "**Licensed consultant**" defined. (NRS
12 618.295, 618.760) "Licensed consultant" means any
13 person who is licensed by the Enforcement Section
14 to be directly involved with providing consultant
15 services regarding the control of asbestos **and who**
16 **is accredited as: 1. An inspector; 2. A management**
17 **planner; 3. A monitor; 4. A project designer; or 5.**
18 **Any combination thereof.** (Emphasis added)

16 NAC 618.9305 **Inspectors:** Requirements for
17 performance of certain inspections; exceptions.
18 (NRS 618.295, 618.760, 618.765) 1. Except as
19 otherwise provided in subsection 2, a person who
20 inspects a building or structure for material
21 containing asbestos or **who collects samples of**
22 **material presumed to contain asbestos** must be an
23 inspector. (Emphasis added)

20 NAC 618.931 Inspectors: Qualifications for
21 accreditation. **To qualify for accreditation as an**
22 **inspector, a licensed consultant must:** 1. Provide
23 evidence of 1 year of experience as an inspector or
24 inspector trainee; 2. Provide evidence of the
25 successful completion of an initial training course
26 approved by the EPA for inspectors which consists
27 of at least 3 training days; and 3. If the
28 certificate for the initial training course
required by subsection 2 has expired, provide
evidence of participation in a refresher training
course approved by the EPA for inspectors.
(Emphasis added)

28 ///

1 The Board finds from the admitted and un rebutted facts in evidence
2 the **collection of suspected asbestos material** work rendered by the
3 respondent through its employee, Mr. Joshua White, specifically required
4 licensing at NAC 618.927(1). The Nevada asbestos abatement regulatory
5 scheme is referenced in NAC 618.850 et seq. The focus for this Board
6 is the cited NAC 618.927(1) which mandates a license requirement to
7 perform the undisputed services Mr. White provided. Statutory/
8 regulatory interpretation is governed as **mandatory** by use of the words
9 "shall not." The undisputed facts in evidence established Mr. White was
10 performing the work of a consultant without a Nevada license.

11 Mr. White was acting within the regulatory scheme parameters of NAC
12 618.928(1) by ". . . **performing surveys to determine if materials**
13 **containing asbestos are present . . .**" The respondent assertions that
14 the related NAC 618.928 was the appropriate regulation for citation
15 and requires all the listed examples be found as conditions to establish
16 "consultant services" before required licensing is not the "plain
17 meaning" nor a correct or reasonable interpretation of the NAC. Further,
18 the regulatory reference at NAC 618.928 provides under subsection (1)
19 "Services provided by a consultant **include, but are not limited to**
20 . . ."

21 The required proof elements for finding a specific violation of the
22 cited NAC 618.927(1) were met by a preponderance of evidence. The
23 regulation was **applicable**. The undisputed facts in evidence
24 demonstrated the regulation specifically applied to the sample
25 collection of suspected asbestos materials as conducted by Mr. White on
26 behalf of respondent EFI. The conditions were **non-compliant** based upon
27 the IH testimony, documents in evidence and respondent authorized
28 representative Ironi admissions that Mr. White did not have a license

1 while engaged in the subject described work of collecting samples
2 suspected of asbestos content for testing. The **employee exposure**
3 element was established by the admitted work performed involving the
4 **potential** hazard of **suspected** asbestos material collection. Notably,
5 the documents in evidence and un rebutted IH testimony established the
6 suspected material ultimately tested positive for asbestos. NAC 618.927
7 provides ". . . **any services as a consultant . . .**" require licensing
8 under the asbestos abatement regulatory scheme. Finally, the proof
9 element of **employer knowledge** was satisfied through the documentary
10 evidence exchanged between the respondent and OSHEs, the un rebutted
11 credible testimony of IH Sanchez, and lawful inferences drawn from that
12 evidence. In particular, Exhibit 3, pages 60 and 63 are preponderant
13 evidence to corroborate the IH testimony demonstrating the experienced
14 employer was involved, engaged and understood the need for **Nevada**
15 **licensed asbestos abatement personnel to perform the testing on samples**
16 **its employee was collecting.**

17 Further to the element of employer knowledge, the applicable
18 occupational safety and health law governing the burden of proof has
19 long recognized that an employer ". . . need **only have knowledge of the**
20 **conditions** under the regulation, **not the actual violative facts.**"

21 The element requires OSHA to establish the
22 employer's actual **or constructive knowledge** of the
23 physical circumstances that comprise the violation.
24 OSHA **is not required to show that an employer knew**
25 **the conditions violated the Act or posed a hazard**
26 **to employees.** *Southwestern Acoustics & Specialty*
Inc., 5 OSH Cases 1091 (Rev. Comm'n 1977) (employer
need be shown **only** to have had **knowledge of**
"physical conditions which constitute a violation,"
not that the condition was prohibited by law).
(Emphasis added)

27 Further as to employer knowledge, the overall quantum of
28 preponderant evidence established EFI knew or ". . . with the exercise

1 of reasonable diligence could have known of the violative condition."
2 (*American Wrecking, supra*, at page 10.)

3 Finally as to the affirmative defense of employee misconduct, while
4 **the burden of proof rests with OSHES under Nevada law, NAC 618.798(1)**
5 **but after establishing same the burden shifts to the respondent to prove**
6 **any recognized defenses.** See *Jensen Construction Co.*, 7 OSHC 1477, 1979
7 OSHD ¶23,664 (1979). Accord, *Marson Corp.*, 10 OSHC 2128, 1980 OSHC
8 1045 ¶24,174 (1980).

9 To establish the affirmative defense of "**unpreventable employee**
10 **misconduct,**" the employer must prove four elements: (1) **established work**
11 **rules** designated to prevent the violation, (2) **adequate communication**
12 of those rules to the employees, (3) **steps taken to discover** any
13 violations of those rules, and (4) **effective enforcement** of those rules
14 after discovering violations. *Marson Corp.*, 10 BNA OSHC 1660 (No. 78-
15 3491, 1982); see *Pabco Gypsum*, 105 Nev. at 373, 775 P.2d at 703, *Terra,*
16 *supra*. (Emphasis added) *Sanderson Farms, Inc. v. OSHRC*, 348 F.App'x 53,
17 57, 22 OSH Cases 1889 (5th Cir. 2009); *Burford's Tree, Inc.*, 22 OSH
18 Cases 1948, 1951-52 (Rev. Comm'n 2010).

19 The respondent provided no evidence, nor certainly any by a
20 preponderance, of the required elements for the defense which must
21 include all four. There was no preponderant evidence of **established**
22 **work rules** designated to prevent violations - nor that the employer **had**
23 **taken steps to discover the violations.** Further, there was no
24 preponderant evidence of **adequate communication** of the work rules to
25 employees; certainly none for Mr. White. Finally there was no
26 preponderant evidence of **effective enforcement** of the rules after
27 discovering violations. Accordingly the affirmative defense of employee
28 misconduct must fail for a lack of the required proof.

1 The regulatory scheme under NAC 618 for asbestos abatement and as
2 specifically cited at 618.927(1) placed the employer on **reasonable**
3 **notice** of the violative conduct it needed to defend. The cited
4 regulation mandated that any person providing consultant services under
5 the asbestos abatement provisions of NAC 618 must first obtain a Nevada
6 license from the Enforcement Section. The specific charges for
7 violation of 618.927(1) satisfied the principles of **citation**
8 **particularity**. Accordingly the charging allegations under the specific
9 citation were sufficient, clear and compliant for enforcing the
10 licensing requirements under Nevada occupational safety and health law.
11 *Del Monte Corp.*, 4 OSH Cases 2035 (Rev. Comm'n 1977). *Ringland-Johnson,*
12 *Inc. v. Dunlop*, 551 F.2d 117, 118, 5 OSH Cases 1137 (8th Cir. 1977);
13 *Brabham-Parker Lumber Co.*, 11 OSH Cases 1201, 1202 (Rev. Comm'n 1983);
14 *Louisiana-Pacific Corp.*, 5 OSH Cases 1994 (1977).

15 DECISION

16 It is the decision of the Nevada Occupational Safety and Health
17 Review Board that a violation of Nevada Revised Statutes did occur as
18 to Citation 1, Item 1, NAC 618.927(1). The violation was properly
19 classified as Regulatory and the penalty proposed of THREE HUNDRED
20 DOLLARS (\$300.00) is confirmed.

21 The Board directs counsel for the complainant, **CHIEF ADMINISTRATIVE**
22 **OFFICER OF THE OCCUPATIONAL SAFETY AND HEALTH ENFORCEMENT SECTION,**
23 **DIVISION OF INDUSTRIAL RELATIONS,** to prepare and submit proposed
24 Findings of Fact and Conclusions of Law to the **NEVADA OCCUPATIONAL**
25 **SAFETY AND HEALTH REVIEW BOARD** and serve copies on opposing counsel
26 within twenty (20) days from date of decision. After five (5) days time
27 for filing any objection, the final Findings of Fact and Conclusions of
28 Law shall be submitted to the **NEVADA OCCUPATIONAL SAFETY AND HEALTH**

