

Re: Olson v. California Department of Pesticide Regulation

Case No.: 07 - 225541

Date: July 18, 2008 Time: 8:30 A.M.
Dept. 10 – The Honorable Lloyd L. Hicks

Motion: Writ of Mandate

Tentative Ruling: To deny the writ.

The court has the administrative record, and no one has made an objection to the lodging of the administrative record, or a motion to augment the record, so the court finds that the administrative record, as lodged, is complete.

The burden of proof falls upon the party attacking the administrative decision to demonstrate wherein the proceedings were unfair, in excess of jurisdiction, or showed prejudicial abuse of discretion. (Patterson Flying Service v. Department of Pesticide Regulation (2008-Fifth District Court of Appeal) 161 Cal.App.4th 411, at pg. 425).

When the underlying administrative decision does not involve or affect a fundamental vested right, the trial court reviews the entire administrative record to determine whether the findings are supported by substantial evidence and whether the agency committed any errors of law. (See Code of Civ. Proc. § 1094.5, subd. (c); Patterson Flying Service v. Department of Pesticide Regulation (2008-Fifth District Court of Appeal) 161 Cal.App.4th 411, at pg. 426).

Generally, substantial evidence has been defined as relevant evidence that a reasonable mind might accept as adequate to support a conclusion, or evidence of ponderable legal significance . . . reasonable in nature, credible, and of solid value. Substantial evidence is not synonymous with "any" evidence, but in an appropriate case, the testimony of a single witness may be sufficient. [See Cal. Admin. Mandamus (Cont.Ed.Bar 3d ed.) Volume I, § 6.171, and the cases cited therein].

The court finds that the standard of review in this case is one of substantial evidence.

The court agrees with Respondent that the Patterson case, supra, recently decided by the Fifth District Court of Appeal, is almost on point with the facts of this case (except for the giving of the antidote to the injured party which was not true in the case herein), as it was a pesticide drift case wherein a fine was imposed. One party was found to have come in contact with drift when the pesticide was applied on adjacent property, and the party sustained injury. The injury required the use of the antidote for the pesticide. The violation by the pesticide applicator was Food & Agricultural Code section 12973, as herein.

Many of Petitioner's arguments were addressed in the Patterson case, and answered in favor of Respondent.

In Patterson the court found that Chapter 5 of the Administrative Procedure Act (APA) did not apply to the hearing. Additionally, the court found the Appellant had not cited any evidence showing that the hearing officer was not a county hearing officer, was not an attorney, or was unqualified in any way. Such is the case herein. Nor has Petitioner cited how the hearing was unfair since it was not required to conform to the procedures of a formal hearing under the APA.

Petitioner was afforded an informal hearing. Evidence was submitted that two parties sustained a physical injury that required a doctor's care. The parties alleged that their injuries occurred when they felt their body and clothes come into contact with the cloud of pesticide being applied on the property adjacent to their property by Petitioner's employees, and it drifted over to them. Lab tests of Casey Gaunas' clothes and other plants and items on Norma and Harold Gaunas' property tested positive for the pesticide being applied next door by Petitioner. The doctor's final impressions were that the physical injury to Casey Gaunas and Norma Gaunas was caused by Pesticide exposure by inhalation and skin although the doctor did not have the result of the blood samples taken when this final impression was made. The blood samples showed slightly higher range for cholinesterase levels for these two parties. Harold Gaunas complaint was dismissed by the hearing officer.

Petitioner was given notice of the violation of §6600(c) for failing to have an anemometer at the site. Petitioner stipulated to the fact that he did not have an anemometer at the site.

Petitioner cannot for the first time on this appeal bring forth the vagueness argument as to the § 12973's standard. Therefore, the court does not address this issue.

The court finds that there was substantial evidence to support the hearing officer's finding that pesticide drifted from the target site onto the two complainants and their property, and substantial evidence supports the hearing officer's finding that the Petitioner's violation of §12973 created an actual health or environmental hazard, thus granting authority for the hearing officer to impose the fine.

Therefore, the court denies the writ.

If no one requests oral argument, under Code of Civil Procedure section 1019.5(a) and California Rules of Court, rule 3.1312(a), no further written order is necessary. The minute order adopting this tentative ruling will become the order of the court and service by the clerk will constitute notice of the order.