BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	Inspection No. **1380273**
BIGGE CRANE & RIGGING, CO **10700 BIGGE STREET** **SAN LEANDRO, CA 94577** **Employer**	**DECISION**

Statement of the Case

Bigge Crane & Rigging, Co (Employer or Bigge) provides cranes and manlift equipment and personnel to contractors for use on construction sites. On February 14, 2019, the Division of Occupational Safety and Health (the Division), through Assistant Safety Engineer Barney Brenes,[1] commenced an accident investigation at a job site located at 101 Oyster Point in South San Francisco, California (job site),[2] after report of an injury at the site on February 11, 2019. On August 9, 2019, the Division issued one citation to Employer alleging a failure to identify, evaluate, and correct workplace hazards associated with operating a construction personnel hoist.

Employer filed a timely appeal, asserting that the safety order was not violated, the classification is incorrect, and the proposed penalty is unreasonable. Employer also asserted a series of affirmative defenses, attached to its original appeal form.[3]

This matter was heard by Kerry Lewis, Administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board. On August 3, 2022, ALJ Lewis conducted the hearing from Sacramento, California, with the parties and witnesses appearing remotely via the Zoom video platform. Fred Walter, attorney at Conn Maciel Carey, LLP, represented Employer. Quoc-Anh Mitchell Dao, staff counsel, represented the Division. The matter was submitted on October 21, 2022.

[1] Barney Brenes is no longer working for the Division and did not testify at the hearing. District Manager Barbara Kim testified in his place.

[2] The citation and Division's documents refer to "181" Oyster Point Boulevard, but the parties stipulated that the address was "101" and the contracts between Employer and the general contractor, Hathaway Dinwiddie, reference "101" Oyster Point Boulevard.

[3] Except as otherwise noted in this Decision, Employer did not present evidence in support of its affirmative defenses, and said defenses are therefore deemed waived. (RNR Construction, Inc., Cal/OSHA App. 1092600, Denial of Petition for Reconsideration (May 26, 2017).)

Issues

1. Did the Division establish that Employer failed to identify, evaluate, and correct workplace hazards associated with operating a construction personnel hoist?

2. Was Employer a "creating employer" pursuant to the Division's multi-employer regulations?

3. Did Employer, as the primary employer of a leased employee, have safety responsibilities at the job site?

4. Did the Division establish a rebuttable presumption that the citation was properly classified as Serious?

5. Did Employer rebut the presumption that the violation cited was Serious by demonstrating that it did not know and could not, with the exercise of reasonable diligence, have known of the existence of the violation?

6. Did the Division establish that Citation 1 was properly characterized as Accident-Related?

7. Is the proposed penalty reasonable?

Findings of Fact[4]

1. On February 11, 2019, Ryan Sanders (Sanders), employed as a foreman for California Drywall, suffered a serious injury while spraying fireproofing material on the exterior of a newly-constructed commercial building.

2. Hathaway was the general contractor at the job site, California Drywall was a subcontractor responsible for spraying fireproofing material on the walls of the building, and Bigge leased to Hathaway a construction personnel hoist (CPH) and an employee to operate the CPH.

3. Employer has a comprehensive written Injury and Illness Prevention Program.

[4] The parties stipulated to the facts contained in Finding of Fact No. 1.

4. Employer's safety program sets forth the expectation that its employees are expected to assist in the identification of hazards while they are working.

5. On February 11, 2019, CPH operator Daniel Avilan (Avilan) entered the CPH at 6:00 a.m. and promptly moved the CPH toward the upper floors without having looked upward prior to entering.

6. The CPH struck the scissor lift upon which Sanders was standing because it was extended into the CPH's path of travel (hoistway) so Sanders could access the exterior wall of the building.

7. The hoistway was clearly visible from the walkway up to the CPH door.

8. If Avilan had looked up before beginning operation of the CPH as he approached it, he would have seen that Sanders was extended into the hoistway on the scissor lift.
9. Avilan's routine practice at the beginning of his shift was to take the CPH directly to the top of the building without inspecting the path of travel prior to ascending.

10. It was Employer's expectation that the CPH operator conduct his pre-shift inspection from the ground floor.

11. Employer did not provide Avilan with sufficient training on its safety policies to ensure that he looked up before operating the CPH.

12. Employer did not identify that Avilan's regular practice of taking the CPH to the top floor to conduct his inspection was contrary to Employer's expectations.

13. The accident on February 11, 2019, would not have occurred if Avilan had identified the hazard of an employee and scissor lift in the hoistway and ensured that the hazard was mitigated before ascending to the upper floors with the CPH.

14. The penalty was calculated in accordance with the Division's policies and procedures.

Analysis

1. Did the Division establish that Employer failed to identify, evaluate, and correct workplace hazards associated with operating a construction personnel hoist?

California Code of Regulations, title 8, section 1509, subdivision (a),[5] provides that "Every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program in accordance with section 3203 of the General Industry Safety Orders."

In Citation 1, the Division referenced two subdivisions of section 3203 as alleged violations:

> (a) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum:
>
> (4) Include procedures for identifying and evaluating work place hazards including scheduled periodic inspections to identify unsafe conditions and work practices. Inspections shall be made to identify and evaluate hazards:
>
> (A) When the Program is first established;
>
> […]
>
> (B) Whenever new substances, processes, procedures, or equipment are introduced to the workplace that represent a new occupational safety and health hazard; and
>
> (C) Whenever the employer is made aware of a new or previously unrecognized hazard.
>
> (6) Include methods and/or procedures for correcting unsafe or unhealthy conditions, work practices and work procedures in a timely manner based on the severity of the hazard:
>
> (A) When observed or discovered; and,

[5] Unless otherwise specified, all references are to sections of California Code of Regulations, title 8.

(B) When an imminent hazard exists which cannot be immediately abated without endangering employee(s) and/or property, remove all exposed personnel from the area except those necessary to correct the existing condition. Employees necessary to correct the hazardous condition shall be provided the necessary safeguards.

In Citation 1, the Division alleges:

Prior to and during the course of the inspection, including but not limited to February 11, 2019, the employer failed to implement an effective Injury and Illness Prevention Program in the following instance:

The employer failed to identify, evaluate, and correct workplace hazards associated with operating a construction personnel hoist when there are open areas above the required hoistway enclosures where persons, parts, and/or equipment may extend out into the pathway of the hoist [T8CCR 3203(a)(4) and (a)(6)].

As a result, an employee (the scissor lift operator) of California Drywall Co. was seriously injured when the construction personnel hoist operated by an employee of Bigge Crane and Rigging Company struck the bottom of the scissor lift platform extension when it was placed beyond the safety screen/gate thereby pinning the employee between the handrail of the scissor lift and a structural I-beam above.

This citation is being issued in accordance with section 336.10 Multi-employer Worksites.

Employer leased a CPH and operator to the general contractor, Hathaway Dinwiddie (Hathaway), for a construction job site located at 101 Oyster Point Boulevard. California Drywall, a subcontractor, had employees working at the job site spraying fireproofing material on the walls. California Drywall and Bigge were both issued citations following an accident involving the CPH and one of California Drywall's employees.

The Division did not cite Employer for a failure to have a written IIPP, or for not including any particular mandatory provisions of the IIPP. Employer has a comprehensive written IIPP. Rather, Employer was cited for failure to implement the safety provisions of the IIPP.

Merely having a written IIPP is insufficient to establish that an employer has implemented the IIPP because proof of implementation requires evidence of actual responses to known or reported hazards. (*National Distribution Center, LP, Tri-State Staffing*, Cal/OSHA App. 12-0378, Decision After Reconsideration (Oct. 5, 2015).)

An Employer's IIPP may be satisfactory as written, but still result in a violation of section 3203, subdivision (a)(6), if the IIPP is not implemented, or through failure to correct known hazards. (*National Distribution Center, LP, Tri-State Staffing, supra*, Cal/OSHA App. 12-0378.) Additionally, where an employer fails to identify and evaluate new hazards, a violation of section 3203, subdivision (a)(4), may be found. (*Barrett Business Services, Inc.*, Cal/OSHA App. 12-1204, Decision After Reconsideration (December 14, 2016).)

Employer's IIPP contains several provisions that reflect a reasonable expectation that its employees participate in the implementation of the safety program.[6] For example, "Your cooperation in detecting hazards, reporting dangerous conditions and controlling workplace hazards is a condition of employment." (Ex. 7, p. 5 [of the document, p. 12 of the Exhibit].) Additionally, the IIPP contains a paragraph entitled "Hazard Identification & Abatement," which states:

> This written safety and health plan sets out a system for identifying workplace hazards and includes methods and/or procedures for correcting unsafe or unhealthy conditions, work practices or work procedures in a timely manner based on the severity of the hazard. Please review it carefully with your supervisor. Remember, safety is everyone's responsibility.

The Division alleges that Employer, through Avilan, did not implement the safety plan because Employer did not ensure that Avilan identified, evaluated, and corrected the hazard resulting from an employee working in the hoistway prior to his operation of the CPH.

Generally, the undisputed facts are that Sanders was spraying fireproofing material on the outside of a building under construction, which put him in the hoistway of the CPH. Sanders had been instructed to spray each level of the outside of the building in the mornings in order to complete the work prior to the arrival of the rest of the workers, when the CPH would be transporting the workers up and down. Sanders had completed the fireproofing on lower levels on previous days and was working on the fourth floor on February 11, 2019. On the morning of the accident, Sanders was still in the hoistway when Avilan arrived at 6:00 a.m. to begin his regular inspection of the CPH. Avilan stepped into the CPH and moved it upwards until he

[6] Throughout the IIPP, Employer takes primary responsibility for inspections, hazard identification, correction of hazards, and other safety obligations. The finding that Employer has an expectation that its employees participate in hazard identification is in no way a finding that Employer has inappropriately delegated its safety duties to its employees.

struck the scissor lift that Sanders was working on, which was extended out into the hoistway to give Sanders access to the side of the building.

Avilan testified that, throughout the workday, he responds to calls from workers on various levels of the building who need a ride up or down. Avilan's written statement during the Division's inspection, and information in Employer's incident report, provided detail about how, on the date of the accident, Avilan had received a call that was unclear, garbled, or otherwise incomprehensible. (Ex. 4, 5, and 8.) Avilan's statement said that he recognized the sound of the fireproofing spray gun in the background of the call, so he decided to respond to the call by going up to where he knew the spray gun would be in use on the fourth floor. Avilan's written statement asserts that he normally does not respond to any calls before 6:30 a.m., but he made an exception to his usual procedure because the CPH had already been in use by another worker prior to his arrival. The statements provided to the inspector regarding receiving an unintelligible call are further corroborated by the contents of Employer's Incident Report. (Ex. 8.) During the hearing, Avilan acknowledged that his written statements were correct.

Avilan's statements to the inspector and to Employer's Director of Environmental Health and Safety, Michael McCarthy (McCarthy), for the Incident Report are given greater weight than the testimony provided during the hearing. Avilan testified that he did not receive a call in the CPH prior to moving it and was moving the CPH for the sole purpose of taking it to the top floor so he could complete his inspection from the top. Avilan testified that, without exception, it is his regular practice to complete his daily inspection of the CPH from the top floor in order to avoid interruptions and requests from other workers to get rides before he was ready to transport them. However, despite giving this emphatic testimony about not receiving a call and taking the CPH up in order to complete his inspection, Avilan acknowledged that his written statements, made closer in time to the events, may have been more accurate than his testimony. (Hearing Transcript p. 188, ln. 15-17. ["I mean, whatever the paper says I believe that's what happened, I mean that's what I wrote."].)

Nonetheless, both versions of Avilan's narrative are ultimately a basis for finding that there was a failure to identify, evaluate, and correct a hazard. In both the written statements and the hearing testimony, Avilan arrived at the CPH in the morning and promptly ascended toward the top of the building without any attempt to identify whether there was anyone or anything in the hoistway.

Although Avilan testified that it is his regular practice to take the CPH directly to the top floor to conduct his inspection, McCarthy testified that the CPH inspection should take place at the bottom floor, not the top. Employer asserted that Avilan is experienced and well-trained, yet his regular practice is contrary to what McCarthy testified should have been done.

There was no testimony about whether Employer provides any training for CPH operators that they should look up before entering the hoistway to ensure that there are no visible obstacles. Avilan testified:

> Q. Do you check -- before you move the hoist at all, do you check to see if there is anything around the hoist or do you just straight to the hoist and move it to the fifth floor -- to the top floor?
> A. No, I just -- I would (inaudible) go to the top floor.

(Hearing Transcript, p. 159, ln. 10-16.)

Employer's failure to ensure that Avilan took appropriate action on a regular basis to adhere to expected safety practices for inspecting the CPH on the bottom floor resulted in a failure to identify a hazard (the presence of a scissor lift with a worker extended out into the hoistway above the CPH), failure to evaluate the hazard (examining the path of travel and determining that Sanders' presence in the hoistway would be problematic if the CPH was moved), and failure to correct the hazard (not moving the CPH until Sanders was out of the hoistway).

Employer failed to ensure that Avilan's regular practice was to look up prior to operating the CPH. This resulted in a failure to see that Sanders was in the hoistway in order to identify, evaluate, and correct the hazard. As such, the Division met its burden of proof of establishing a violation of section 3203, subdivision (a)(4) and (a)(6), applicable to the construction industry as a violation of section 1509, subdivision (a).

2. Was Employer a "creating employer" pursuant to the Division's multi-employer regulations?

Section 336.10 defines the categories of employers at multi-employer worksites that may be cited when the Division has evidence of employee exposure to a hazard in violation of any requirement enforceable by the Division. (*McCarthy Building Companies, Inc*., Cal/OSHA App. 11-1706, Decision After Reconsideration (January 11, 2016); *Airco Mechanical, Inc.*, Cal/OSHA App. 99-3140, Decision After Reconsideration (Apr. 25, 2002); *see also,* Lab. Code §6400.) Employers that may be cited include (1) the employer whose employees were exposed to the hazard (the exposing employer); (2) the employer that actually created the hazard (the creating employer); (3) the employer who was responsible, by contract or through actual practice, for safety and health conditions on the worksite, which is the employer who had the authority for ensuring the hazardous condition is corrected (the controlling employer); and (4) the employer who has the responsibility for actually correcting the hazard (the correcting employer). (*McCarthy Building Companies, Inc., supra,* Cal/OSHA App. 11-1706.)

The Board has previously concluded that a multi-employer worksite may still be found even when the various cited employers are not contemporaneously working at the site. (*Electrical Systems and Instrumentations, Inc.,* Cal/OSHA App. 316695469, Decision After Reconsideration and Order of Remand (Sept. 22, 2017).) There was no dispute that Hathaway was the controlling employer, as Hathaway was the general contractor on the job site. The parties stipulated that the injured employee worked for California Drywall. Thus, California Drywall was the exposing employer. During cross-examination, the Division's District Manager, Barbara Kim (Kim), testified that Employer was cited as the creating employer.

Creating employer

The employer that actually created the hazard may be cited even if the exposed employees are not employed by that entity. (*Electrical Systems and Instrumentations Inc*., *supra*, Cal/OSHA App. 316695469.) Employer argued that it did not create the hazard. Employer argues that the hazard was created by the California Drywall employee who was working in a scissor lift extended into the pathway of the CPH.

However, the hazard for which Employer was cited involves the identification, evaluation, and correction of the hazard of operating a CPH when there may be people or equipment in its path of travel. While the California Drywall employee working in the CPH's path of travel was also creating a hazard, the particular IIPP violation that created a hazard for which Employer was cited was properly attributed to Employer as the creating employer. It was Employer's failure to ensure that its CPH operator identified, evaluated, and corrected a hazard prior to operating the CPH that was a citable violation of the safety orders.

Accordingly, under section 336.10, subdivision (b), Employer is citable as a creating employer.

3. Did Employer, as the primary employer of a leased employee, have safety responsibilities at the job site?

Employer argues that Bigge was not working as an employer on a multi-employer worksite. Rather, the CPH operator, Avilan, was in a dual employment relationship, with Hathaway as his secondary employer and Bigge as his primary employer. The contract between Hathaway and Bigge provided that Hathaway was leasing both a CPH operator and the CPH, with Hathaway assuming exclusive control over the work performed by the operator.

In "dual employer" circumstances, each employer is responsible for complying with California's workplace safety and health standards. (*Strategic Outsourcing Inc.*, Cal/OSHA App. 10-0905 through 0914, Denial of Petition for Reconsideration (Sept. 16, 2011).) Labor Code section 6401.7, subdivision (a), requires that every employer establish, implement, and maintain an effective injury prevention program. It has long been found by the Appeals Board that both dual employers have safety responsibilities to a leased employee. For example, a primary employer must establish an IIPP and provide training which addresses general hazards as well as the potential hazards employees may be exposed to at the secondary worksite. (*Staffchex*, Cal/OSHA App. 10-2456, Decision After Reconsideration (Aug. 28, 2014).). The primary employer's general training responsibilities include "general safe and healthy work practices and … specific instruction with respect to hazards specific to each employee's job assignment." (*Sully-Miller Contracting Co. v. California Occupational Safety & Health Appeals Bd.* (2006) 138 Cal.App.4th 684.)

McCarthy testified that Employer conducts periodic inspections of the worksites where its leased employees are working, even when Employer is not a subcontractor with a regular presence at the particular site. Beyond those inspections, Employer asserts that its obligation as a primary employer of Avilan did not extend to knowing every detail of the work being performed at the job site each day, including knowing when a California Drywall employee would be working in the hoistway. It is noted that even regularly scheduled *daily* inspections of the job site would not necessarily have identified that Sanders would be on a scissor lift extended into the hoistway at the start of the workday. Sanders testified that he regularly began his fireproofing work in the CPH hoistway at approximately 5:00 a.m. and finished within approximately 30 minutes, which meant that he would be out of the CPH's path long before Avilan arrived to begin operation of the CPH.[7]

However, the violation for which Employer was cited involves the implementation of its IIPP, including identification, evaluation, and correction of hazards. As set forth above, the primary employer is required to ensure that its employees are trained and performing their duties in compliance with its IIPP, even when they are leased to a secondary employer.

As such, Employer is not relieved of responsibility for the violation based on the mere fact that Employer's role in the employment relationship with Avilan was that of a primary employer and there was no day-to-day or task-by-task control exercised over Avilan.

[7] Sanders did not explain what had caused him to still be on the scissor lift extended into the hoistway at 6:00 a.m. on the date of the accident.

4. Did the Division establish a rebuttable presumption that the citation was properly classified as Serious?

Labor Code section 6432, subdivision (a), provides, in relevant part:

> (a) There shall be a rebuttable presumption that a "serious violation" exists in a place of employment if the division demonstrates that there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation. The demonstration of a violation by the division is not sufficient by itself to establish that the violation is serious. The actual hazard may consist of, among other things:
> […]
>
> (2) The existence in the place of employment of one or more unsafe or unhealthful practices that have been adopted or are in use.

The Appeals Board has defined the term "realistic possibility" to mean a prediction that is within the bounds of human reason, not pure speculation. (*A. Teichert & Son, Inc. dba Teichert Aggregates*, Cal/OSHA App. 11-1895, Decision After Reconsideration (Aug. 21, 2015), citing *Janco Corporation*, Cal/OSHA App. 99-565, Decision After Reconsideration (Sep. 27, 2001).) "Serious physical harm" is defined as an injury or illness occurring in the place of employment that results in, among other possible factors, "inpatient hospitalization for purposes other than medical observation." (Lab. Code §6432, subd. (e).)

The violation for which Employer was cited, failure to identify, evaluate, and correct hazards, created the actual hazard of operating the CPH without awareness of people, equipment, or materials being in the hoistway above the CPH. Kim testified that there is a realistic possibility that an employee may sustain serious physical harm such as crushing injuries or death as a result of the violation. The parties stipulated that the injured employee, Sanders, suffered a serious injury requiring more than 24 hours of hospitalization after he was struck by the ascending CPH. This demonstrates that there was not only a realistic possibility of serious physical harm, but the violation resulted in actual serious physical harm.

Accordingly, the Division met its burden to establish a rebuttable presumption that the violation was properly classified as Serious.

5. Did Employer rebut the presumption that the violation cited was Serious by demonstrating that it did not know and could not, with the exercise of reasonable diligence, have known of the existence of the violation?

Labor Code section 6432, subdivision (c), provides that an employer may rebut the presumption that a Serious violation exists by demonstrating that the employer did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation. In order to satisfactorily rebut the presumption, the employer must demonstrate both:

> (1) The employer took all the steps a reasonable and responsible employer in like circumstances should be expected to take, before the violation occurred, to anticipate and prevent the violation, taking into consideration the severity of the harm that could be expected to occur and the likelihood of that harm occurring in connection with the work activity during which the violation occurred. Factors relevant to this determination include, but are not limited to, those listed in subdivision (b) [; and]
>
> (2) The employer took effective action to eliminate employee exposure to the hazard created by the violation as soon as the violation was discovered.

Labor Code section 6432, subdivision (b), provides that the following factors may be considered:

> (A) Training for employees and supervisors relevant to preventing employee exposure to the hazard or to similar hazards; (B) Procedures for discovering, controlling access to, and correcting the hazard or similar hazards; (C) Supervision of employees exposed or potentially exposed to the hazard; and (D) Procedures for communicating to employees about the employer's health and safety rules and programs.

As set forth in Labor Code section 6432, subdivision (b), the burden is on the employer to rebut the presumption that the citation was properly classified as Serious.

There was testimony from McCarthy about Employer's expectations for the initial operation of the CPH which conflicted with what Avilan said he does as his regular practice. Employer presented evidence through testimony from McCarthy that the expected procedure for inspecting the CPH prior to operation is to conduct an inspection of the CPH on the first level. McCarthy testified that it would be unusual for the hoist operator to move the hoist to the top floor before beginning the inspection of the hoist. There was no evidence that part of the inspection process was to look up prior to moving the CPH to an upper floor. Accordingly, it is

inferred that there was a lack of a procedure for discovering and correcting hazards such as a person working in the hoistway at the start of the workday. There was no evidence presented at hearing to show that observing the area around and above the CPH was, in fact, part of Employer's expected procedures.

Accordingly, Employer did not rebut the presumption that the citation was properly classified as Serious.

6. Did the Division establish that Citation 1 was properly characterized as Accident-Related?

In order for a citation to be classified as Accident-Related, there must be a showing by the Division of a "causal nexus between the violation and the serious injury." (*Webcor Construction LP dba Webcor Builders*, Cal/OSHA App. 317176766, Denial of Petition for Reconsideration (Jan. 20, 2017).) The violation need not be the only cause of the accident, but the Division must make a "showing [that] the violation more likely than not was a cause of the injury." (*Id.*, citing *MCM Construction, Inc.*, Cal/OSHA App. 13-3851, Decision After Reconsideration (Feb. 22, 2016).)

The violation was that Employer failed to identify, evaluate, and correct a hazard prior to operating the CPH. There were other factors that caused the accident, including failure of either Hathaway or California Drywall to implement safety procedures while Sanders was working in the hoistway. However, the fact that Employer did not ensure that Avilan looked up as part of his inspection, and that the inspection occurred from the ground floor, in order to identify any potential hazards in the hoistway was certainly one cause of the accident. The parties stipulated that Sanders' injury met the definition of serious injury. As such, Sanders' injury was caused by the violation.

Therefore, Citation 2 is properly characterized as Accident-Related.

7. Is the proposed penalty reasonable?

Penalties calculated in accordance with the penalty-setting regulations set forth in sections 333 through 336 are presumptively reasonable and will not be reduced absent evidence that the amount of the proposed civil penalty was miscalculated, the regulations were improperly applied, or that the totality of the circumstances warrant a reduction. (*RNR Construction, Inc.*, *supra*, Cal/OSHA App. 1092600, citing *Stockton Tri Industries, Inc.*, Cal/OSHA App. 02-4946, Decision After Reconsideration (Mar. 27, 2006).)

Kim testified that the penalty for Citation 1 was calculated in accordance with Division policies. The Base Penalty of $18,000 for a Serious violation was not reduced because it was characterized as an Accident-Related violation and the only permissible reduction for Accident-Related violations is Size. (§336, subd. (d)(7).) Employer did not provide any information which would support a finding that the penalty was miscalculated, the regulations were improperly applied, or that any other reduction should have been made.

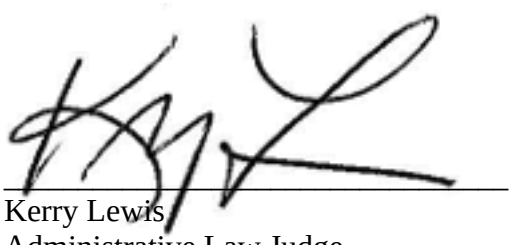
Accordingly, the penalty of $18,000 is reasonable.

Conclusion

The Division established a violation of section 1509, subdivision (a), with reference to section 3203, subdivisions (a)(4) and (a)(6), because Employer failed to identify, evaluate, and correct a hazard. The citation was properly classified as Serious Accident-Related. The proposed penalty is reasonable.

Order

It is hereby ordered that Citation 1 is affirmed and the penalty is sustained, as set forth in the attached Summary Table incorporated herein.



Dated: 11/02/2022

Kerry Lewis
Administrative Law Judge

The attached decision was issued on the date indicated therein. If you are dissatisfied with the decision, you have thirty days from the date of service of the decision in which to petition for reconsideration. Your petition for reconsideration must fully comply with the requirements of Labor Code sections 6616, 6617, 6618 and 6619, and with California Code of Regulations, title 8, section 390.1. **For further information, call: (916) 274-5751.**