

**BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD**

In the Matter of the Appeal of:

**CARLTON FORGE WORKS
7743 EAST ADAMS STREET
PARAMOUNT, CA 90723**

Employer

Inspection No.
1375070

DECISION

Statement of the Case

Carlton Forge Works (Employer) produces industrial forgings. Beginning January 31, 2019, the Division of Occupational Safety and Health (Division), through Associate Safety Engineer Omar Castillo (Castillo), commenced an inspection at 7743 East Adams Street, Paramount, California. On April 4, 2019, the Division cited Employer for failing to implement an effective Injury and Illness Prevention Program.

Employer filed a timely appeal of Citation 1, Item 1, on the ground that the safety order was not violated and the classification was incorrect. Employer filed timely appeals of Citation 2, Item 1, and Citation 3, Item 1, on the ground that the safety order was not violated. Employer also asserted numerous affirmative defenses.¹ At hearing, the Division withdrew Citation 2, Item 1, and Citation 3, Item 1, and Employer agreed to a waiver of costs.

This matter was heard by Sam E. Lucas, Administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board in West Covina, California, on October 11, 2019. Louis A. Ferreira, an attorney for Stoel Rives LLP, represented Employer. Tuyet-Van Tran, Staff Attorney, represented the Division. The matter was submitted for decision on February 12, 2020.

Issues

1. Did the Division establish that Employer failed to implement an effective Injury and Illness Prevention Program by not identifying unsafe working conditions created by rotating billets?

¹ Except where discussed 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. 10926000, Denial of Petition for Reconsideration (May 26, 2017).)

Findings of Fact

1. Aldo Castro was injured on January 22, 2019, when moving a large metal rod, called a billet.
2. Employer had a written safety program that included procedures for identifying and evaluating work place hazards. The written program included the requirement for scheduled periodic inspections to identify unsafe conditions and work practices.
3. Employer's safety program provided training on the operation of overhead cranes while moving billets. The training included information on how to operate the cranes in a manner which would mitigate the rotation or swinging of the billets.

Analysis

- 1. Did the Division establish that Employer failed to implement an effective Injury and Illness Prevention Program by not identifying unsafe working conditions created by rotating billets?**

In Citation 1, Item 1, Employer was cited for a violation of California Code of Regulations, title 8, section 3203, subdivision (a)(4)², which provides:

- (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.

² All section references are to the California Code of Regulations, title 8, unless otherwise specified.

In the citation, the Division alleges:

Prior to and during the course of the inspection, including but not limited to, on January 31, 2019, the employer failed to implement an effective Injury and Illness Prevention Program, including but not limited to identifying unsafe working conditions created by rotating billets suspended by overhead cranes in the Saw Department.

Pursuant to section 3203, subdivision (a), employers are required to establish, implement, and maintain an effective IIPP. Section 3203(a)(4) requires that employers include in their IIPP “procedures for identifying and evaluating work place hazards.” (*Brunton Enterprises, Inc.*, Cal/OSHA App. 08-3445, Decision After Reconsideration (Oct. 11, 2013).) “These procedures must include ‘scheduled periodic inspections to identify unsafe conditions and work practices.’” (*Id.*) The safety order “contains no requirement for an employer to have a written procedure for each hazardous operation it undertakes.” (*Id.*) What is required is for Employer to have procedures in place for identifying and evaluating workplace hazards, and these procedures are to include “scheduled periodic inspections.” (*Id.*)

The Division has the burden of proving a violation by a preponderance of the evidence. (*ACCO Engineered Systems*, Cal/OSHA App. 1195414, Decision After Reconsideration (Oct. 11, 2019).) “‘Preponderance of the evidence’ is usually defined in terms of probability of truth, or of evidence that when weighed with that opposed to it, has more convincing force and greater probability of truth with consideration of both direct and circumstantial evidence and all reasonable inferences to be drawn from both kinds of evidence.” (*Timberworks Construction, Inc.*, Cal/OSHA App. 1097751, Decision After Reconsideration (Mar. 12, 2019).)

In its work, Employer must move large metal rods, called billets, around its forging facility. The billets vary in size and weight, measuring between 15 to 20 feet long and weighing approximately 1,000 to about 20,000 pounds. To move the billets around the facility, employees use chains attached to an indoor system of cranes. The cranes are set in tracks attached to the ceiling and remotely operated by a wireless hand-held controller. On January 22, 2019, employee Aldo Castro (Castro) was moving billets and became pinned against a work table by the billet he was moving. The billet Castro was moving was about 15 feet long and just over 1,000 pounds. Castro testified the billet he was attempting to move was resting on a table that had a work surface approximately three feet off the ground. Castro used the controller to attempt to bring the billet closer to him so that he could remove the chains attaching the billet to the crane. Instead of moving slightly closer to Castro, the billet moved off the table, “dropped, swung, and pinned [him] against the back table.” Castro lost consciousness for about five to ten seconds and suffered injuries such as bone fractures, lumbar compression, and damage to his excretory system. These facts are not substantially in dispute by the parties.

The focus of the Alleged Violation Description and the Division’s closing brief is an alleged failure of Employer to identify the unsafe working condition created by the rotation of billets suspended by the overhead crane. The Division does not argue that Employer did not have a written Injury and Illness Prevention Program (IIPP) or that Employer did not conduct periodic inspections to identify the hazards. Castillo testified that Employer’s IIPP met the minimum writing requirements of section 3203, but alleged that the violation was in the implementation of the IIPP – that Employer’s IIPP did not address “rotating” or “swinging” billets. Therefore, the issue herein is narrowed to whether Employer identified “rotating” or “swinging” billets as an unsafe working condition.

Castro testified that he received classroom and on-the-job training when he started working for Employer. This training included instruction on how to test the crane control and how to inspect the crane. Additionally, Castro testified that he was trained to lift the billet slightly off the ground at first to ensure a stable load, explaining that the slight initial lift was meant to help control the rotation of the billet. Castro also testified that he was trained to use a metal stick (called a standoff tool) to control the billet while it was in motion and to keep it from twisting. Castro testified that he was trained to verify the location of personnel prior to moving the billet, trained not to operate the crane while another person was close to the billet, and not to lift the billet over the head of a person. Castro testified further that he was trained to not “suddenly” accelerate or decelerate the billet because it could cause the billet to swing or rotate. Two conclusions can reasonably be drawn from this evidence: (1) Employer identified crane operation as a general hazard requiring training; and (2) Employer identified the hazard of the suspended billet becoming unstable or rotating.

Employer’s Environmental Safety Manager, Luc Ong (Ong), credibly testified at hearing that Employer requires the use of the standoff tool because Employer identified a suspended billet as a hazard. The tool is used to keep employees at a distance from the billet while still being able to control it.

The testimony of Castro and Ong is supported by Employer’s safety presentation for new employees, its Job Safety Analysis, and its IIPP, introduced at hearing as Exhibits A, B, and D, respectively. A partial list of instructions on moving the overhead crane load is part of the new employee safety training presentation and includes the following:

- Avoid carrying loads over people
- Verify personnel are clear prior to lifting or moving the load
- Ensure load is secure and balanced before lifting more than a few inches
- Lift slowly until load clears the ground
- Never suddenly accelerate or decelerate with a moving load

The same presentation admonishes, “[a]void sudden stops as the load may swing outward and possibly injure others.” Exhibit B, Employer’s Job Safety Analysis, lists being “struck by” a load as a potential hazard of transporting a billet by crane.

Taken together, the preponderance of the evidence supports a finding that Employer identified the hazard caused by billets suspended by a crane. There is no evidence to support an allegation that Employer was ineffective in identifying the hazard posed by the rotating or swinging billets. Further, the evidence adduced at hearing does not support a finding that Employer was made aware of a new or previously unrecognized hazard. Accordingly, the Division has not met its burden of proof, and the citation is dismissed.

Conclusion

The evidence does not support a finding that Employer violated section 3203, subdivision (a)(4).

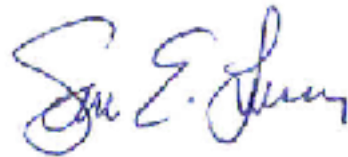
ORDER

It is hereby ordered that Citation 1, Item 1, is dismissed.

It is hereby ordered that Citation 2, Item 1, is withdrawn by agreement of the parties.

It is hereby ordered that Citation 3, Item 1, is withdrawn by agreement of the parties.

It is further ordered that the penalties are dismissed as set forth in the attached Summary Table.



Dated: 03/10/2020

SAM E. LUCAS
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.**