BEFORE THE

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

DEPARTMENT OF INDUSTRIAL RELATIONS

STATE OF CALIFORNIA

In the Matter of the Appeal of: NICHOLSON-BROWN, INC. 1600 Norman Avenue Santa Clara, California 95050	)	DOCKET NO. 77-R1D4-024 GRANT OF PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

The Occupational Safety and Health Appeals Board, acting pursuant to authority vested in it by the California Labor Code, hereby grants the Petition for Reconsideration filed in the above-entitled matter by Nicholson-Brown, Inc. (Employer) and makes the following Decision After Reconsideration.

JURISDICTION

On December 2, 1976, a representative of the Division of Occupational Safety and Health (Division) conducted an inspection at a place of employment maintained by Employer and issued to it a citation alleging a nonserious (now general) violation of Title 8, California Administrative Code.[1] A civil penalty was proposed.

Employer filed a timely appeal from the citation contesting the existence of a violation of section 1621(a) and the reasonableness of the changes required by the Division to abate the violation, and from the notice of civil penalty contesting the assessment of a $40 penalty. After a hearing before an Administrative Law Judge of the Appeals Board, the appeal was denied in a Decision dated April 19, 1977.

On May 23, 1977, a timely Petition for Reconsideration was filed by Employer and the matter was taken under submission by the Appeals Board on May 24, 1977. The Division did not file an Answer to the Petition.

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1. Unless otherwise specified, all references are to sections of Title 8, California Administrative Code.

Citation No. 1
Nonserious (General)
8 Cal. Adm. Code 1621(a)

ISSUE

Is the evidence sufficient to establish a violation of section 1621(a)?

REASONS FOR DECISION AFTER RECONSIDERATION

The evidence established that Employer's carpenter was engaged in laying plywood form decking upon four inch by four inch joists approximately 14 feet above grade. The employee had worked his way from the center of the structure up to a distance of five or six feet from the perimeter and was laying the next to last row of decking. Approximately 60 feet of this row had been laid at the time of the inspection. No railings had been installed on the nearby edge, although they were to be installed (the plans specifically called for the rail to be constructed) by the carpenter after he finished laying 20 to 30 feet of decking along the perimeter. Similar railings had been installed on other sides of the structure after the carpenter had brought the decking almost flush to the edge. No other employee was required to work near the edge of the structure.

Employer contends on reconsideration that to require the installation of a railing before the plywood decking is brought flush with the perimeter of the structure is more hazardous than installing the decking first. Under the former procedure, an employee would be required to straddle 4 inch joists (actual measurement 3½ inches) spaced 12 inches on center (actual opening 8½ inches) and would not have a solid floor or working surface upon which to stand to measure, cut and install the railing.

Section 1621(a) requires railings ". . . on all open sides and ends of . . . elevated platforms, surfaces . . . or other elevations 7½ feet or more above the ground, floor, or level underneath." However, more than the mere existence of an open-sided floor more than 7½ feet above the ground is necessary to establish a violation. There must be some evidence that employees came within the zone of danger while performing work-related duties, pursuing personal activities during work, or employing normal means of ingress and egress to their work stations. Some time also must be allowed the employer to do that which the safety order requires. This is especially true of the ever changing conditions of a construction site, where new hazards are created and old ones abated as construction advances. The requirements of any safety order will not begin to apply until the necessary and logical time has arrived for an employer to make provisions to correct the violation and abate the hazard.

In the instant matter, to require Employer to erect railings before decking is in place at the perimeter is not logical, since it could prove to be more hazardous than attempting to install that protection with the benefit of a firm flat surface upon which to stand.[2] Since employer made provisions to install the railings, limited employees in the area to only the concerned carpenter who was not exposed to the hazard of falling from the edge of the platform, a violation of section 1621(a) was not established and the penalty must be set aside.

DECISION AFTER RECONSIDERATION

The Decision issued in this matter dated April 19, 1977, is reversed. The appeals from a violation of section 1621(a) and from the penalty of $40 are granted.

HAROLD MITCHELL
Chairman

MARK K. BOWERS
Member

CHARLES MANFRED
Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

DATE: DEC 20 1979

2. The Division recognizes that in similar situations the hazard of performing work at the leading edge of decking can be less than the hazard involved in rigging life lines and safety belts. See AI-69, 11-6-75.