BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	Inspection No. **1471575**
DESERT GARAGE DOOR, INC. **1328 NORTH INYO STREET** **RIDGECREST, CA 93550** **Employer**	**DECISION**

Statement of the Case

Desert Garage Door, Inc. (Employer) installs and services garage doors. On April 1, 2020, the Division of Occupational Safety and Health (the Division), through Associate Safety Engineer Daniel Pulido (Pulido), commenced an accident investigation of a project located at 636 Mamie Street, Ridgecrest, California (the job site) in response to an injury report.

On July 15, 2020, the Division issued two citations to Employer, alleging seven violations: (1) failure to timely report a Serious injury; (2) failure to develop, implement, and maintain an Injury and Illness Prevention Program; (3) failure to conduct "toolbox" or "tailgate" safety meetings at least every 10 days; (4) failure to ensure that there was an employee available that was trained in administering first aid at the construction site; (5) failure to have a written plan to address emergency medical services; (6) failure to establish, implement, and maintain a written Heat Illness Prevention Plan containing all of the required elements; and (7) failure to ensure that only qualified employees operate circular hand saws.

Employer timely appealed the citations, contesting the existence of the violations, the classifications of the violations, the reasonableness of the abatement requirements, the reasonableness of the proposed penalties, and asserting the Independent Employee Action Defense.[1]

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 March 19, 2021. Terry Muhle, owner, represented Employer. Efren Gomez, District Manager, represented the Division. The matter was submitted on July 23, 2021.

[1] Except as otherwise noted, 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 Employer timely report to the Division the serious injury suffered by its employee?

2. Did Employer establish, implement, and maintain an effective Injury and Illness Prevention Program?

3. Did Employer conduct "toolbox" or "tailgate" safety meetings at least every 10 days?

4. Did Employer ensure that there was an employee available at the job site that was trained in administering first aid?

5. Did Employer have a written plan to address emergency medical services?

6. Did Employer's Heat Illness Prevention Plan contain all required elements?

7. Was Barry Nation qualified to operate a circular hand saw?

8. Did the Division properly classify Citation 1, Item 1, as a Regulatory violation?

9. Did the Division properly classify Citation 1, Items 2, 4, 5, and 6, as General violations?

10. Were the proposed penalties reasonable?

Findings of Fact

1. On March 17, 2020, Barry Nation (Nation) was using a powered circular saw. The saw kicked back and cut his thumb. Nation's left thumb was amputated.

2. Employer reported Nation's injury to the Division on March 20, 2020.

3. Employer had not implemented an Injury and Illness Prevention Plan (IIPP) before the Division requested a copy of its IIPP.

4. Employer conducts daily safety meetings.

5. Employer did not have an employee at the job site who was trained to render first aid.

6. Employer did not have a written plan to provide emergency medical service.

7. Employer did not have a written Heat Illness Prevention Plan (HIPP) containing all of the required elements.

8. Nation has operated circular hand saws for 30 years and typically keeps both hands on such saws during operation.

9. Employer's untimely report of Nation's injury does not have a relationship to occupational safety and health of employees.

10. Employer's failure to implement an IIPP has a relationship to occupational safety and health of employees because implementation of an IIPP increases the likelihood of identifying and correcting hazards before an injury occurs.

11. Employer's failure to have an employee available at the job site who was trained to render first aid has a relationship to occupational safety and health of employees because first aid can minimize harm from minor injuries.

12. Employer's failure to have a written plan to provide emergency medical service has a relationship to occupational safety and health of employees because such plans increase the likelihood of an appropriate and timely response to an emergency requiring medical service.

13. Employer's failure to have an HIPP containing all of the required elements has a relationship to occupational safety and health of employees because such plans reduce the risk of heat illness.

14. The proposed penalty for the late report of Nation's injury did not account for Employer's size, good faith, or history.

15. The proposed penalties for Citation 1, Items 2, 4, 5, and 6, were calculated in accordance with the penalty-setting regulations.

Analysis

1. Did Employer timely report to the Division the serious injury suffered by its employee?

California Code of Regulations, title 8, section 342, subdivision (a),[2] under "Reporting Work-Connected Fatalities and Serious Injuries," provides:

> Every employer shall report immediately by telephone or telegraph to the nearest District Office of the Division of Occupational Safety and Health any serious injury or illness, or death, of an employee occurring in a place of employment or in connection with any employment.

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

> Immediately means as soon as practically possible but not longer than 8 hours after the employer knows or with diligent inquiry would have known of the death or serious injury or illness. If the employer can demonstrate that exigent circumstances exist, the time frame for the report may be made no longer than 24 hours after the incident.
>
> Serious injury or illness is defined in section 330(h), Title 8, California Administrative Code.
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> Citation 1, Item 1, alleges:
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> Employer failed to immediately report to the Division a serious injury suffered by an employee using a power driven circular hand saw to cut a piece of wood for a garage door installation project on or about March 17, 2020.

On March 17, 2020, Nation was performing work for a garage door at the job site. At approximately 8:45 A.M., Nation was using a powered circular saw to cut a piece of wood that was approximately two inches wide, three inches high, and three feet long. Nation held the circular saw in his right hand and the piece of wood in his left hand. The saw kicked back as it cut the wood, hitting Nation's left thumb. Nation's co-worker drove him to a local hospital which stabilized the wound. However, Nation required additional treatment. Employer's owner, Terry Muhle (Muhle), drove Nation two hours to Loma Linda hospital where Nation's thumb was amputated. Nation was discharged from Loma Linda hospital before midnight on the date of the accident. Muhle drove Nation home from the hospital that night. Employer reported the injury on March 20, 2020. The parties do not dispute that Nation suffered a Serious injury.

Here, Employer did not report Nation's injury within the required time. It is clear that Employer was aware of the Serious injury on March 17, 2020, because Muhle drove Nation to and from Loma Linda hospital on the day of the accident. Yet Employer did not report the injury until March 20, 2020. This is beyond the eight hours provided in section 342, subdivision (a), and beyond the 24 hours permitted in cases of exigent circumstances.

Employer asserts that it was not trying to avoid reporting the injury to the Division. At hearing, Muhle indicated he did not know of the 8-hour reporting period until he spoke to Employer's workers' compensation insurer on March 20, 2020. Employer reported the injury to the Division shortly thereafter. However, lack of awareness of the law does not excuse non-compliance with substantive or procedural requirements. (*Pescaderia Mr. Fish PO, LLC dba Pescaderia Fish Market Mr. Fish*, Cal/OSHA App. 1274695, Denial of Petition for Reconsideration (November 12, 2019).)

Accordingly, Employer violated the safety order and Citation 1, Item 1, is affirmed.

2. Did Employer establish, implement, and maintain an effective Injury and Illness Prevention Program?

Section 1509, subdivision (a), requires that "[e]very employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (IIPP) in accordance with section 3203 of the General Industry Safety Orders."

Section 3203 provides that employers must have a written IIPP that meets minimum requirements. It provides, in part, as follows:

> (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:
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> (1) Identify the person or persons with authority and responsibility for implementing the program.
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> . . .
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> (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:
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> (A) When the Program is first established . . . .
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> (B) Whenever new substances, processes, procedures, or equipment are introduced to the workplace that represent a new occupational safety and health hazard; and
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> (C) Whenever the employer is made aware of a new or previously unrecognized hazard.
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> . . .
>
> (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
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> (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.

Citation 1, Item 2, alleges:

> Prior to and during the course of the investigation, the Employer did not develop, implement, and maintain a written Injury and Illness Prevention Program for its employees in accordance with this section.

Here, the Division requested a copy of Employer's written IIPP. (Exhibit 2.) Pulido testified that Employer provided a Code of Safe Practices and safety training documents in response to the request, but did not provide an IIPP.

At hearing, Employer submitted several documents regarding safety. (Exhibits E-1 through E-4 and F-1 through F-4). Muhle indicated that he had not known what an IIPP is until his wife found the documents submitted at hearing. Employer did not establish that these documents were in existence and implemented prior to the issuance of the citations. Additionally, Muhle's lack of awareness is significant because he is the owner of the corporation and he explained his extensive involvement in the business, such as training, scheduling, and supervision. His lack of awareness of an IIPP supports an inference that Employer had not established and implemented a compliant IIPP before the issuance of the citations.

Accordingly, Employer violated the safety order and Citation 1, Item 2, is affirmed.

3. Did Employer conduct "toolbox" or "tailgate" safety meetings at least every 10 days?

Section 1509, subdivision (e), provides:

> Supervisory employees shall conduct "toolbox" or "tailgate" safety meetings, or equivalent, with their crews at least every 10 working days to emphasize safety.

Citation 1, Item 3, alleges:

> Prior to and during the course of the investigation, the Employer did not conduct "toolbox" or "tailgate" safety meetings, or equivalent, with their crews at least every 10 working days to emphasize safety for employees engaged in garage installation work at the jobsite

Here, the Division requested documents regarding "Tailgate Safety Meetings (Last 3 months as of 04/01/20)." (Exhibit 2.) Pulido testified that Employer did not provide records of such meetings.

Nation testified that Employer conducts daily safety meetings. This testimony relates directly to the safety order's requirement. Although Employer did not provide records of such meetings in response to the Division's request, the cited safety order does not require employers to document "toolbox" or "tailgate" safety meetings. Therefore, Nation's testimony outweighs the lack of documentation.

Accordingly, the Division did not meet its burden to establish that Employer violated the safety order. Citation 1, Item 3, is vacated.

4. Did Employer ensure that there was an employee available at the job site that was trained in administering first aid at the job site?

Section 1512, subdivision (b), provides:

> Appropriately Trained Person. Each employer shall ensure the availability of a suitable number of appropriately trained persons to render first aid. Where more than one employer is involved in a single construction project on a given construction site, the employers may form a pool of appropriately trained persons. However, such pool shall be large enough to service the combined work forces of such employers.

Citation 1, Item 4, alleges:

> Prior to and during the course of the investigation, including but not limited to, on March 17, 2020, the Employer did not ensure that there was an employee available that was trained in administering first aid at the construction site.

Here, the Division requested documents regarding "First Aid Training Certificate for any employee available at the accident site on 03/27/20." (Exhibit 2.) Pulido testified that Employer did not provide a certificate of first aid training for any employees. At hearing, Employer did not offer testimony or exhibits indicating any employee was trained in administering first aid at the job site. The absence of training documentation combined with the absence of testimony supports a findingthat Employer did not ensure the availability of appropriately trained persons to render first aid.

Accordingly, the preponderance of the evidence indicates Employer violated the safety order. Citation 1, Item 4, is affirmed.

5. Did Employer have a written plan to address emergency medical services?

Section 1512, subdivision (i), provides:

> Written Plan. The employer shall have a written plan to provide emergency medical services. The plan shall specify the means of implementing all applicable requirements in this section. When employers form a combined emergency medical services program with appropriately trained persons, one written plan will be considered acceptable to comply with the intent of this subsection.

Citation 1, Item 5, alleges:

> Prior to and during the course of the investigation, including but not limited to, on March 17, 2020, the Employer did not have a written plan addressing requirements of this section.

Here, the Division requested documents regarding "Written plan to provide emergency medical service." (Exhibit 2.) Pulido testified that Employer did not provide a written plan to provide emergency medical service.

Employer offered testimony to show that Ridgecrest is a small town, and residents know where the hospital is located. However, the safety order requires a written plan. The absence of a written plan provided in response to the Division's request supports a finding that Employer did not have, at the time of the investigation, a written plan to provide emergency medical service.

Accordingly, the preponderance of the evidence indicates Employer violated the safety order. Citation 1, Item 5, is affirmed.

6. Did Employer's Heat Illness Prevention Plan contain all required elements?

Section 3395, subdivision (i), provides:

> Heat Illness Prevention Plan. The employer shall establish, implement, and maintain, an effective heat illness prevention plan. The plan shall be in writing in both English and the language understood by the majority of the employees and shall be made available at the worksite to employees and to representatives of the Division upon request. The Heat Illness Prevention Plan may be included as part

of the employer's Illness and Injury Prevention Program required by section 3203, and shall, at a minimum, contain:

(1) Procedures for the provision of water and access to shade.
(2) The high heat procedures referred to in subsection (e).
(3) Emergency Response Procedures in accordance with subsection (f).
(4) Acclimatization methods and procedures in accordance with subsection (g).

Citation 1, Item 6, alleges:

Prior to and during the course of the investigation, the employer did not establish, implement, and maintain a written Heat Illness Prevention Plan containing all of the elements required by this subsection.

Here, the Division requested documents regarding "Heat Illness Prevention Plan." (Exhibit 2.) Pulido testified that Employer responded with a one-page document that mentioned heat illness. Pulido further testified that the document did not address "shade, water, replenishment of water, acclimatization, or emergency response procedures."

At hearing, Employer offered a one-page document titled: "Heat Stress – Know the Signs and How to Prevent Them." (Exhibit B-8.) Although this document has helpful information regarding heat illness, it does not address several elements required to be in a heat illness prevention plan. In particular, it does not address procedures for the provision of water and access to shade, high heat procedures, emergency response procedures, and acclimatization methods and procedures.

Accordingly, the preponderance of the evidence indicates Employer did not have a heat illness prevention plan with all of the required elements. Citation 1, Item 6, is affirmed.

7. Was Barry Nation qualified to operate a circular hand saw?

Section 1510, subdivision (b), provides:

The employer shall permit only qualified persons to operate equipment and machinery.

Citation 2, Item 1, alleges:

> Prior to and during the course of the investigation, the employer failed to ensure that only qualified employees operate circular hand saws. As a result, on or about March 17, 2020, an employee sustained a serious injury while using a circular hand saw to cut a piece of wood for a garage door installation project.

Section 1504, subdivision (a), defines "qualified person" as "a person designated by the employer who by reason of training, experience or instruction has demonstrated the ability to safely perform all assigned duties . . . ."

The Division has the burden of proving a violation by a preponderance of the evidence. (*Howard J. White, Inc.*, Cal/OSHA App. 78-741, Decision After Reconsideration (June 16, 1983).) "Preponderance of the evidence" is usually defined in terms of probability of truth, or of evidence that when weighted 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. (*Nolte Sheet Metal, Inc.*, Cal/OSHA App. 14-2777, Decision After Reconsideration (Oct. 7, 2016).)

Here, the Division contends that Nation was not a "qualified person" to operate the circular hand saw involved in the accident. The Division submitted the manufacturer's operating instructions for the saw (Exhibit 3), which states that operators should place both hands on the saw during operation. The parties do not dispute that Nation had only one hand on the circular saw at the time of the accident. Pulido testified that Nation told him it is not always possible to keep both hands on the saw during operation. Pulido further testified that both Nation and Muhle told him that Employer does not train or require operators to keep both hands on the saw during operation.

Nation testified that he has operated circular hand saws on an almost daily basis for over thirty years. He further stated that he always has vise grips and clamps on his work truck for securing work pieces that need to be cut with the saw. Nation testified that he has read the entire operator's manual for the circular hand saw involved and that he was aware that he should have placed both hands on the saw during operation. He explained that his "head was not in the right place" that day for personal reasons. Nation also testified that, although it is not a common practice, the accident was not the first time that he kept only one hand on the saw while operating it. He estimated that he had operated a circular hand saw with only one hand "a few dozen times" during the course of his eleven-year employment with Employer.

The evidence establishes that Nation has extensive experience with circular hand saws and that he is able to safely perform his duties. He has operated circular hand saws with only one

hand on a few dozen occasions, but that amounts to only a small portion of his usage. “A few dozen times” over the course of eleven years is approximately three times per year. Considering that Nation uses circular saws almost daily, this means he operates them with both hands for the vast majority of the time. This demonstrates Nation is able to safely use circular hand saws. Rather than a lack of ability to safely perform his duties, the evidence indicates Nation chose not to operate the saw in a safe manner on the day of the accident.

Accordingly, the Division did not meet its burden to establish that Nation was not a qualified person to operate a circular hand saw. Accordingly, Citation 2, Item 1 is vacated.

8. Did the Division properly classify Citation 1, Item 1, as a Regulatory violation?

Section 334, subdivision (a), defines Regulatory violations as follows:

> Regulatory Violation - is a violation, other than one defined as Serious or General that pertains to permit, posting, recordkeeping, and reporting requirements as established by regulation or statute. For example, failure to obtain permit; failure to post citation, poster; failure to keep required records; failure to report industrial accidents, etc.

Citation 1, Item 1, pertains to the late report of the Serious injury suffered by Nation on March 17, 2020. As a violation that pertains to a reporting requirement, it falls within the definition of a Regulatory violation. Additionally, the parties do not contend the violation was a General or Serious violation. Accordingly, the violation was properly classified as a Regulatory violation.

9. Did the Division properly classify Citation 1, Items 2, 4, 5, and 6, as General violations?

A. Citation 1, Item 2

Section 334, subdivision (b), defines General violations as follows:

> General Violation - is a violation which is specifically determined not to be of a serious nature, but has a relationship to occupational safety and health of employees.

With respect to Citation 1, Item 2, Employer failed to establish, implement, and maintain an effective IIPP. This failure has a relationship to occupational safety and health of employees because an IIPP is a comprehensive program for identifying and correcting hazards, as well as training and communicating with employees regarding hazards and safe work practices. An effective program makes the workplace safer while the absence of an effective program increases the risk of unsafe conditions. Additionally, the parties do not contend the violation was a Serious violation. Accordingly, Citation 1, Item 2, was properly classified as General.

B. Citation 1, Item 4

With respect to Citation 1, Item 4, Employer failed to ensure the availability of a suitable number of appropriately trained persons to render first aid at the job site. This failure has a relationship to occupational safety and health of employees because first aid can minimize the harm from minor injuries, whereas in the absence of first aid an injury can become worse than necessary. Additionally, the parties do not contend the violation was a Serious violation. Accordingly, Citation 1, Item 4, was properly classified as General.

C. Citation 1, Item 5

With respect to Citation 1, Item 5, Employer failed to have a compliant written plan to provide emergency medical services. This failure has a relationship to occupational safety and health of employees because a written plan is a reference that can be used by employees in responding to an emergency situation. A compliant written plan increases the likelihood of an appropriate and timely response to an emergency, while the absence of a compliant plan increases the risk of an insufficient or untimely response. Additionally, the parties do not contend the violation was a Serious violation. Accordingly, Citation 1, Item 5, was properly classified as General.

D. Citation 1, Item 6

With respect to Citation 1, Item 6, Employer failed to establish, implement, and maintain, a heat illness prevention plan containing all of the required elements, including procedures for the provision of water and access to shade, high heat procedures, emergency response procedures, and acclimatization methods and procedures. This failure has a relationship to occupational safety and health of employees because the procedures at issue reduce the risk of heat illness and increase the chance of appropriate and timely response to a heat illness emergency. Additionally, the parties do not contend the violation was a Serious violation. Accordingly, Citation 1, Item 6, was properly classified as General.

10. Were the proposed penalties 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. (*Stockton Tri Industries, Inc.*, Cal/OSHA App. 02-4946, Decision After Reconsideration (Mar. 27, 2006).)

A. Citation 1, Item 1

The base penalty for a late report of a Serious injury is $5,000. (Section 336(a)(6).) The Appeals Board has established that a penalty for a late report, as opposed to a failure to report, must be adjusted in accordance with section 336, subdivision (d), for the size of the business, the good faith of the employer, and the employer's history of previous violations. "The result is that employers who report, though somewhat untimely, will receive penalty modifications as were applied prior to the amendment of Labor Code section 6409.1(b)." (*Central Valley Engineering and Asphalt, Inc.*, Cal/OSHA App. 08-5001, Decision After Reconsideration and Remand (Dec. 4, 2012).) "The principles of statutory construction reveal it is not a mandatory minimum penalty and … remains subject to modifications for size, good faith and history under Labor Code section 6319(c)." (*Id.*)

Any remaining ambiguity in the way the Appeals Board interprets Labor Code section 6409.1 and section 336, subdivision (a)(6), was removed in three Decisions After Reconsideration issued on December 26, 2012:

> When the violation is a late report, and there is some compliance with the reporting requirement, the only effect of the 2002 amendment of the Labor Code, and the subsequently adopted regulation (§336(a)(6)) was to increase the gravity-based penalty assessment (i.e. the penalty subject to adjustment per Labor Code § 6319 as appropriate) from $500 to $5000. Remaining unchanged by the amendment is the obligation in Labor Code section 6319 that the Division's regulations take into consideration the size, good faith, and history of the employer when assessing a final penalty.

(*SDUSD-Patrick Henry High School*, Cal/OSHA App. 11-1296, Decision After Reconsideration and Order of Remand (Dec. 26, 2012); *Distribution Center Management Group,* Cal/OSHA App. 11-2896, Decision After Reconsideration and Order of Remand (Dec. 26, 2012); *Denio's Roseville Farmers Market & Auction, Inc*., Cal/OSHA App. 11-2431, Decision After Reconsideration and Order of Remand (Dec. 26, 2012).)

Here, Pulido testified that Employer is entitled to the maximum credit for size, and Employer did not dispute it is entitled to the maximum credit. Thus, Employer is entitled to the maximum credit of 40 percent for size. (§§335, subd. (b) and 336, subd. (d)(1).)

Additionally, Pulido testified that Employer is entitled to the maximum credit for history, and Employer did not dispute it is entitled to the maximum credit. Thus, Employer is entitled to the maximum credit of 10 percent for history. (§§335, subd. (d) and 336, subd. (d)(3).)

With respect to good faith, section 335, subdivision (c), provides:

> (c) The Good Faith of the Employer--is based upon the quality and extent of the safety program the employer has in effect and operating. It includes the employer's awareness of CAL/OSHA, and any indications of the employer's desire to comply with the Act, by specific displays of accomplishments. Depending on such safety programs and the efforts of the employer to comply with the Act, Good Faith is rated as:
>
> GOOD-- Effective safety program.
>
> FAIR-- Average safety program.
>
> POOR-- No effective safety program.

Pulido testified that Employer's safety program and cooperation with the inspection was average compared to other employers he has inspected. Employer's evidence does not indicate its safety program was better than average. Thus, Employer is entitled to a 15 percent credit for good faith. (§§335, subd. (c) and 336, subd. (d)(2).)

Accordingly, the base penalty must be reduced by a total of 65 percent, which leads to an assessed penalty of $1,750.

B. Citation 1, Items 2, 4, 5, and 6

The Division presented testimony that its proposed penalties for Citation 1, Items 2, 4, 5, and 6, were calculated in accordance with the penalty-setting regulations. The Division submitted its Proposed Penalty Worksheet (Exhibit 9) and Pulido testified regarding the basis for the calculations. Employer did not present evidence that Pulido's calculations were incorrect. Accordingly, the proposed penalties are affirmed for Citation 1, Items 2, 4, 5, and 6.

Conclusion

The evidence supports a finding that Employer violated section 342, subdivision (a), for failure to timely report a Serious injury. The proposed penalty, as modified herein, is reasonable.

The evidence supports a finding that Employer violated section 1509, subdivision (a), for failure to develop, implement, and maintain an Injury and Illness Prevention Program. The proposed penalty was reasonable.

The evidence does not support a finding that Employer violated section 1509, subdivision (e), for failure to conduct "toolbox" or "tailgate" safety meetings at least every 10 days.

The evidence supports a finding that Employer violated section 1512, subdivision (b), for failure to ensure that there was an employee available that was trained in administering first aid at the construction site. The proposed penalty was reasonable.

The evidence supports a finding that Employer violated section 1512, subdivision (i), for failure to have a written plan to address emergency medical services. The proposed penalty was reasonable.

The evidence supports a finding that Employer violated section 3395, subdivision (i), for failure to establish, implement, and maintain a written Heat Illness Prevention Plan containing all of the required elements. The proposed penalty was reasonable.

The evidence does not support a finding that Employer violated section 1510, subdivision (b), for failure to ensure that only qualified employees operate machinery or equipment.

ORDER

It is hereby ordered that Citation 1, Item 1, is affirmed and the penalty is modified to $1,750.

It is hereby ordered that Citation 1, Item 2, is affirmed and a penalty of $130 is sustained.

It is hereby ordered that Citation 1, Item 3, is vacated.

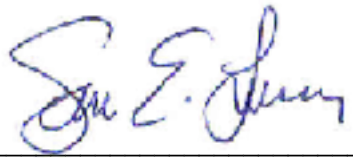
It is hereby ordered that Citation 1, Item 4, is affirmed and a penalty of $130 is sustained.

It is hereby ordered that Citation 1, Item 5, is affirmed and a penalty of $130 is sustained.

It is hereby ordered that Citation 1, Item 6, is affirmed and a penalty of $130 is sustained.

It is hereby ordered that Citation 2, Item 1, is vacated.

It is further ordered that the penalties indicated above and as set forth in the attached Summary Table be assessed.



Dated: 08/13/2021

SAM E. LUCAS
Presiding 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.**