

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

In the Matter of the Appeal of:

**L & S FRAMING  
1145 TARA CT.  
ROCKLIN, CA 95765**

**Employer**

Inspection No.

**1442233**

**DECISION**

**Statement of the Case**

L & S Framing (Employer) operates a construction company. Beginning November 1, 2019, the Division of Occupational Safety and Health (Division), through Associate Safety Engineer, Shannon Lichty, conducted an inspection of a job site located at 12552 Farlen Circle, in Rancho Cordova, California, in response to a report of injury that occurred on October 19, 2019.

On April 2, 2020, the Division issued one citation, consisting of two items, to Employer. At the beginning of the hearing, Employer withdrew its appeal of Citation 1, Item 1, leaving only Citation 1, Item 2, at issue. Citation 1, Item 2, alleges that Employer failed to effectively implement its Injury and Illness Prevention Program because it did not provide effective training to an employee on the proper use of a skill saw.

Employer filed a timely appeal of Citation 1, Item 2, asserting that the safety order was not violated. Employer also asserted a series of affirmative defenses.<sup>1</sup>

This matter was heard by Jennie Culjat, Administrative Law Judge (ALJ), for the California Occupational Safety and Health Appeals Board (Appeals Board) from Sacramento, California. The parties and witnesses appeared remotely via the Zoom video platform on February 7, 2023. Perry Poff, Attorney at Donnell, Melgoza, and Scates LLP, represented Employer. Rachel Brill, Staff Counsel, represented the Division. The matter was submitted for decision on May 1, 2023.

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<sup>1</sup> 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. 1092600, Denial of Petition for Reconsideration (May 26, 2017).)

### **Issues**

1. Did Citation 1, Item 2, describe with sufficient particularity the nature of the alleged violation?
2. Did Employer effectively train Jose Hernandez Espinoza on the hazards of operating a skill saw?

### **Findings of Fact**

1. On October 19, 2019, Jose Hernandez Espinoza (Espinoza) suffered an amputation of his left index finger while performing work with a skill saw.
2. Associate Safety Engineer, Shannon Lichty (Lichty), interviewed Espinoza about the accident on February 14, 2020. During the interview, Espinoza told Lichty he was cutting a 2 x 4 wood piece with a skill saw while holding the skill saw in his right hand and holding the wood piece with his left hand. Espinoza explained to Lichty that he did not know how the accident happened. Espinoza realized, after he finished cutting the wood piece, that his finger had been cut.
3. During the interview, Espinoza informed Lichty, at the time of the accident, he was cutting the wood piece the way he had been trained by Employer.
4. Employer provided skill saw training to Espinoza on January 10, 2018. The training consisted of classroom and hands-on training covering various topics, including safe cutting and saw handling.
5. Espinoza's training on safe cutting and saw handling included unbinding the skill saw blade and various other skills, such as square cuts, angled cuts, plunge cuts, ripping different types of material, and shoring plywood.
6. Espinoza's Skill Saw Certification contains a photograph of him demonstrating the skill of unbinding a skill saw blade, which, when the blade is no longer in motion, requires holding the workpiece across the saw operator's foot, securing it with one hand, and pulling the skill saw out of the wood piece with the other hand.

## Analysis

### **1. Did Citation 1, Item 2, describe with sufficient particularity the nature of the alleged violation?**

Labor Code section 6317 requires, in relevant part, that “[e]ach citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the code, standard, rule, regulation, or order alleged to have been violated.” As to the particularity requirement in Labor Code section 6317, the Appeals Board has held:

It is well settled that administrative proceedings are not bound by strict rules of pleading. As long as an employer is informed of the substance of the violation and the citation is sufficiently clear to give fair notice and to enable it to prepare a defense, the employer cannot complain of technical flaws. [Citations.]

(*Barrett Business Services, Inc.*, Cal/OSHA App. 12-1204, Decision After Reconsideration (Dec. 14, 2016).)

In *Shimmick Construction Company Inc.*, Cal/OSHA App. 1059365, Decision After Reconsideration (Jul. 5, 2019), the Appeals Board found that a citation did not meet the particularity requirements when the alleged violation description “merely mimic[ked] the requirements of the safety order” and failed to provide “at least some minimal reference” to the conditions leading to the issuance of the citation.

In Citation 1, Item 2, the Division cited employer for an alleged violation of California Code of Regulations, title 8, section 1509, subdivision (a),<sup>2</sup> which provides that “[e]very employer shall establish, implement and maintain an effective Injury and Illness Prevention Program in accordance with section 3203 of the General Industry Safety Orders.” Section 3203 requires employers to have a written Injury and Illness Prevention Program (IIPP) that meets the minimum requirements set forth in the regulation and that the IIPP must be established, implemented, and maintained effectively. Citation 1, Item 2, reflects the cited regulation and Alleged Violation Description (AVD) as follows:

T8 CCR 1509(a). Injury and Illness Prevention Program (a) 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.  
Reference: T8 CCR §3203(a)(7) - Injury and Illness Prevention Program (7)  
Provide training and instruction:

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<sup>2</sup> Unless otherwise specified, all references are to sections of California Code of Regulations, title 8.

Prior to and during the course of the investigation, including, but not limited to, 11/1/19, the employer[']s Injury and Illness Prevention Program was ineffective in that, the employer failed to provide effective training to an employee regarding the proper use of a skill saw.

Employer argued in its post-hearing brief that the AVD in Citation 1, Item 2, is insufficient because it “failed to address what hazards or conditions the training failed to address or why it was alleged the training was ineffective.”

The AVD does not simply mirror the language of the safety order without any reference to the conditions resulting in the alleged violation. The AVD indicates that the hazard or condition leading to the alleged violation was an employee who was not effectively trained regarding the use of a skill saw. While the AVD did not identify the aspect of the training that the Division deemed insufficient, Employer did not establish that it was unable to determine the condition leading to the issuance of the citation based on the language in the AVD.

“[A]n employer must show prejudice in order to sustain an allegation that the description in the citation was not sufficiently particular.” (*Hypower, Inc. dba Hypower Electric Services, Inc.*, Cal/OSHA App. 12-1498, Denial of Petition for Reconsideration (Sep. 11, 2013).) Employer made no showing of prejudice and presented no evidence that it was unable to prepare a defense. Indeed, at the hearing, Employer presented its evidence and did not claim to be unprepared.

Based on the foregoing, it is found that Citation 1, Item 2, meets the particularity requirements of Labor Code section 6317.

**2. Did Employer effectively train Jose Hernandez Espinoza on the hazards of operating a skill saw?**

*a. Applicability of section 3203, subdivision (a)(7).*

As discussed above, the Division cited Employer for a violation of section 3203, subdivision (a)(7), which provides, in relevant part:

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:

...

(7) Provide training and instruction:

- (A) When the program is first established;
- ...
- (B) To all new employees;
- (C) To all employees given new job assignments for which training has not previously been received;
- (D) Whenever new substances, processes, procedures or equipment are introduced to the workplace and represent a new hazard;
- (E) Whenever the employer is made aware of a new or previously unrecognized hazard; and,
- (F) For supervisors to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control may be exposed.

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 (Jun. 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).)

Employer argued that the Division failed to prove the applicability of the safety order because the Division did not establish any of the circumstances found in section 3203, subdivision (a)(7)(A) through (F), which would require Employer to provide training to Espinoza. However, this argument is misplaced.

It was not disputed that Employer provided some training to Espinoza regarding the skill saw. Employer would have been required to train Espinoza to use the skill saw when he began employment or when first tasked with operating the skill saw if he had not been previously trained. (§3203, subd. (a)(7)(B) & (C).) Employer submitted Espinoza’s Skill Saw Certification, which documents various areas of training on the safe operation of a skill saw with accompanying photographs of Espinoza demonstrating a skill for each category of training. (Ex. C.) Edgar Avalos (Avalos), who was Employer’s Safety Coordinator during the relevant period, testified that as Safety Coordinator, he was responsible for training new employees and provided the skill saw training to Espinoza. These facts are sufficient to establish that Employer trained Espinoza because it was required to do so. Accordingly, the safety order applies.

*b. Effectiveness of training.*

In *FedEx Freight Inc.*, Cal/OSHA App. 1099855, Decision After Reconsideration (Sept. 24, 2018), the Appeals Board analyzed an employer's IIPP for effectiveness of its training program. In its discussion of section 3203, subdivision (a)(7), the Appeals Board stated:

Training is the touchstone of any effective IIPP. [Citations.] The Division may prove a violation of section 3203, subdivision (a)(7), by showing that the implementation of training required by this section is inadequate. [Citations.] The purpose of section 3203, subdivision (a)(7), is to provide employees with the knowledge and ability to recognize, understand, and avoid the hazards they may be exposed to via their work assignment. [Citation.] The training provided by the Employer must be of sufficient quality to make employees 'proficient or qualified' on the subject of the training. [Citation.]

"The Board has held that an IIPP can be found not effectively established, maintained, or implemented on the ground of one deficiency, if that deficiency is shown to be essential to the overall program." (*Hansford Industries, Inc. DBA Viking Steel*, Cal/OSHA, App. 1133550, Decision After Reconsideration (Aug. 13, 2021).) Training is essential to an overall workplace safety program. (*Mountain Cascade, Inc.*, Cal/OSHA App. 01-3561, Decision After Reconsideration (Oct. 17, 2003).) However, an occurrence of an accident, by itself, is not sufficient proof that an employer's overall training program is deficient. (*Michigan-California Lumber Company*, Cal/OSHA App 91-759, Decision After Reconsideration (May 20, 1993).)

Lichty testified that she determined Employer did not effectively train Espinoza to use the skill saw based on his statements and Employer's training records for Espinoza. The Division asserted that Espinoza's training records contradict the skill saw's instruction manual and Employer's own written training instructions regarding the use of a skill saw.

The skill saw instruction manual provides: "Never hold piece being cut in your hands or across your leg. Secure the workpiece to a stable platform. It is important to support the work properly to minimize body exposure, blade binding, or loss of control." (Ex. 13, boldface omitted.) The Skill Saw Manual also warns to "ALWAYS hold the tool firmly with both hands. NEVER place your hand or fingers behind the saw. If kickback occurs, the saw could easily jump backward over your hand, leading to serious personal injury." (*Id.*, boldface omitted.)

Employer's written training instructions provide: "Secure and support the work piece. Use clamps and a stable work surface. Do not hold the work by hand or against your body." (Ex. 12.) The written training instructions also provide: "Grip saw with both hands, keeping hand away from blade". (*Id.*)

Lichty interviewed Espinoza in person on February 14, 2020.<sup>3</sup> Lichty made an audio recording of the interview. (Ex. 8.) During the interview, Espinoza informed Lichty that, at the time of the accident, he was using a skill saw to cut a 2 x 4 wood piece while holding the skill saw in his right hand and holding the wood piece with his left hand.<sup>4</sup> Espinoza could not say exactly how the accident happened, but only that after he completed the cut, he realized that his finger had been cut. Lichty testified that Espinoza informed her that he was using the skill saw as he had been trained by Employer.

Employer made a hearsay objection to the recorded interview of Espinoza and Lichty's testimony that Espinoza told her he was performing a cut the way he had been trained. California Evidence Code section 1200, subdivision (a), defines hearsay evidence as "evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated." The Appeals Board's evidence rules, found in section 376.2, provide that "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions."

As to Espinoza's statement about how he was trained, Lichty also relied on a photograph in Espinoza's Skill Saw Certification. As discussed above, Espinoza's Skill Saw Certification documents various areas of training on the safe operation of a skill saw with accompanying photographs of Espinoza demonstrating a particular skill. (Ex. C.) One topic in Espinoza's Skill Saw Certification requires the employee "to demonstrate safe cutting and handling of the saw." (*Id.*) The photograph, upon which the Division relies, shows Espinoza holding a 2 x 4 or similar wood piece over the top of his right foot with his left hand and holding the skill saw over the wood piece with his right hand. (*Id.*) Lichty testified that she believed this photograph depicts Espinoza demonstrating a cutting procedure, which corroborated what Espinoza told her about his training.

The photograph, on its face, appears to show Espinoza demonstrating cutting a wood piece similarly to what he described happened at the time of the accident. However, the only witness with personal knowledge about Employer's skill saw training testified to the contrary.

Avalos provided Employer's skill saw training to Espinoza. Avalos testified that, while he could not recall taking the specific photograph at issue, he believes the photograph depicts

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<sup>3</sup> The interview was conducted at Espinoza's home. One of Espinoza's household members translated during the interview from English to Spanish and Spanish to English.

<sup>4</sup> Lichty's typed summary notes of the February 14, 2020, interview, which Employer also objected to as hearsay, reflect that Espinoza told Lichty that he was holding the skill saw in his right hand, while placing the wood piece over his right foot and holding it with his left hand. (Ex. 5.) However, when listening to the audio recording, it could not be discerned that Espinoza actually said that he placed the wood piece over his foot.

Espinoza demonstrating the skill of unbinding the skill saw blade from the wood piece. Avalos explained that the action depicted in the photograph is how employees were trained to unbind a skill saw blade. Avalos further explained that, when a skill saw blade is bound, an appropriate course of action to unbind the blade, once the blade comes to a complete stop, is to place the wood piece across the saw operator's foot, securing it with one hand, and pulling the skill saw out of the wood piece with the other hand.

Avalos also testified that, in addition to unbinding the skill saw blade, there were various other skills covered under the cutting and saw handling topic, such as square cuts, angled cuts, plunge cuts, ripping different types of material, and shoring plywood. Avalos explained that there was only one photograph taken for each topic in the Skill Saw Certification. In other words, while a variety of skills or steps were covered under each training topic, each skill or step was not photographed. Avalos testified that unbinding a saw blade is part of saw handling.

The testimony from Avalos refutes the Division's interpretation of the photograph. Lichty conceded that she did not question Espinoza or Employer about the photograph or the Skill Saw Certificate to confirm her belief about what the photograph depicted. As there is no other reliable evidence as to what is happening in the photograph, Avalos's testimony must be credited. Accordingly, the photograph does not corroborate Espinoza's statement about his training because the photograph does not depict Espinoza demonstrating a cutting procedure as asserted by the Division.

The evidence as to what Espinoza was actually doing at the time of the accident is also a hearsay statement. There were no witnesses to the accident. It may be inferred that Espinoza had one hand on the skill saw at the time of the accident by virtue of his finger being amputated. "The Board has previously held that reasonable inferences can be drawn from the evidence introduced at a hearing." (*Morrow Meadows Corporation*, Cal/OSHA App. 12-0717, Decision After Reconsideration (Oct. 5, 2016), citing *Mechanical Asbestos Removal, Inc.*, Cal/OSHA App. 86-362, Decision After Reconsideration (Oct. 13, 1987).) However, even if he had one hand on the skill saw, there is insufficient evidence to establish that Espinoza was performing a cutting procedure or handling the skill saw incorrectly due to ineffective training.

While the skill saw instruction manual and Employer's written training instructions advise to grip the saw with both hands, the skill saw instruction manual also provides the following instruction regarding unbinding:

When blade is binding, or when interrupting a cut for any reason, release the trigger and hold the saw motionless in the material until the blade comes to a complete stop. Never attempt to remove the saw from the work or pull the saw backward while the blade is in motion or kick back may occur. Investigate and



take corrective actions to eliminate the cause of blade binding.

(Ex. 13, boldface omitted.) These instructions suggest that a corrective course of action may require an exception to the requirement to use both hands to grip the skill saw. Avalos's testimony about unbinding also supports that it may be necessary to handle the skill saw with only one hand, and furthermore, that it may be appropriate to hold a workpiece by hand.

Employer also pointed to a section of the skill saw instruction manual that provides: "Lower guard should be retracted manually only for special cuts such as 'plunge cuts' and 'compound cuts.'" (Ex. 13, boldface omitted.) Employer argued that manually retracting the lower guard requires a cut to be performed with only one hand on the skill saw. Lichy testified that she did not know what a plunge or compound cut was, but conceded that, based on the skill saw instruction manual, these cuts require a brief one hand use of the skill saw. Moreover, Avalos testified that plunge and compound cuts are examples of cuts that are performed without the use of clamps and that certain cuts require the workpiece to be held by hand.

Avalos explained that the above exceptions were covered in the hands-on portion of the training. Avalos further explained that Employer's written training instructions, which were reviewed in the classroom portion of the training, did not include every skill that is covered in the hands-on portion. The respective training segments are meant to be complementary to one another. That is, while the written instructions advise to use both hands and not to hold a workpiece by hand, this was not the only training provided and exceptions were covered in the hands-on portion of the training.

Overall, there is insufficient evidence to establish what Espinoza was doing at the time of his injury or that it was the result of improper training on performing a cutting procedure or handling the skill saw. Additionally, the fact that the accident happened, by itself, is not sufficient proof to establish that training was ineffective. (See *Michigan-California Lumber Company, supra*, Cal/OSHA App 91-759.)

Based on the foregoing, the Division presented insufficient evidence to establish that Employer failed to effectively train Espinoza regarding the use of a skill saw. Accordingly, the Division has not proven that Employer violated section 3203, subdivision (a)(7).

**Conclusion**

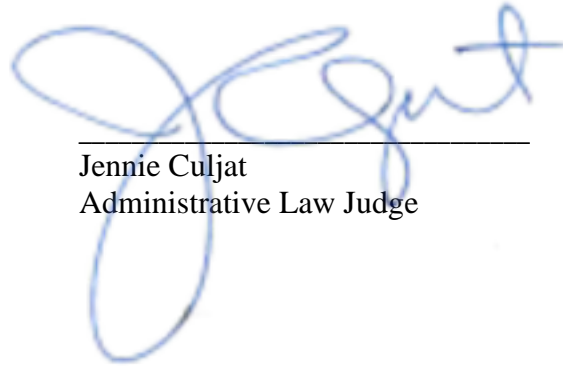
The evidence fails to support a finding that Employer violated section 3203, subdivision (a)(7). Therefore, Employer's appeal of Citation 1, Item 2, is granted.

**Order**

It is hereby ordered that Citation 1, Item 2, is dismissed and the penalty is vacated.

It is further ordered that the penalty for Citation 1, Item 1, be assessed as set forth in the attached Summary Table.

Dated: 05/30/2023



\_\_\_\_\_  
Jennie Culjat  
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.**