

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

CYNTHIA VASQUEZ, *Applicant*

vs.

SABERT CORPORATION, *Defendants*

**Adjudication Number: ADJ10677338
Riverside District Office**

**OPINION AND ORDER DENYING
PETITION FOR RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration, the contents of the Report of the workers' compensation administrative law judge (WCJ) with respect thereto, and the contents of the WCJ's Opinion on Decision. Based on our review of the record, and for the reasons stated in the WCJ's Report and Opinion, which are both adopted and incorporated herein, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ NATALIE PALUGYAI, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 6, 2023

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

**CYNTHIA VASQUEZ
LAW OFFICES OF RENE PIMENTEL
FOLEY & LARDNER**

DLM/oo

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. o.o

REPORT & RECOMMENDATION FOR PETITION FOR RECONSIDERATION

I

INTRODUCTION

Identity of Petitioner: Defendant Sabert Corporation
Timeliness: The petition was filed timely.
Verification: The petition was properly verified.
Date of Issuance of the Award: August 8, 2023

II

CONTENTIONS

1. The evidence does not justify the Award.

III

FACTS

Cynthia Vasquez, a 54 year old machine operator, sustained injury arising out of and in the course of her employment to her arm, fingers and nervous system while employed by Sabert Corporation on October 24, 2016. The case in chief was resolved by way of a Joint Compromise and Release (including ADJ10753054) with Order Approving Compromise and Release issuing on August 17, 2021. The issues now before the Board are whether the injured worker is entitled to additional benefits against Sabert Corporation with allegations of serious and willful misconduct under Labor Code Section 4553 and attorney fees. The matter proceeded to hearing before this Administrative Law Judge (WCJ) Jeffrey Wilson on November 2, 2022, December 13, 2022, March 21, 2023, May 1, 2023, and May 31, 2023, with witness testimony provided on behalf of applicant to include Jorge Loaiza, Frances Kingston, Anna Stebbens, and Lisa Phillian. Defendant produced testimony of witness Stewart Gallaher. Ultimately, this WCJ issued Findings and Award on August 8, 2023, finding injury resulting from serious and willful misconduct of the employer and with applicant entitled to additional benefits under Labor Code Section 4553.

In addressing the issue of serious and willful misconduct of the employer there are certain facts which must be considered. Firstly, applicant sustained very serious admitted injury on October 24,

2016, resulting in loss of her right upper extremity and partial amputation of the left hand/fingers. At the time of injury applicant was in the process of cleaning rolls or rollers on an extruder machine identified as CA3. The machine in question contains three rollers.

Purportedly the rollers were running in an open position during the cleaning process, and with a roll closing on applicant's cleaning rag and jacket and further pulling applicant inwards through her right side and with applicant caught inside the rollers. The machine contains safety warnings and devices (E-Stop) which applicant maintains she attempted to engage, and yet which did not function at the time of injury. Eventually CAL/OSHA performed an inspection including interviewing various witnesses and cited Sabert for several safety violations including, but not limited to, T8CCR3203(a)(4), T8CCR3314(c), and T8CCR4187(a). Violations of T8CCR3314(c) and T8CCR4187(a) were termed or described by CAL/OSHA as being "serious". Generally, CAL/OSHA determined that Sabert Corporation had not effectively implemented its own injury/illness prevention plan or properly identified or evaluated potential hazards (CCR3203(a)(4), failed to provide disengagement, de-energization of mechanically block or stop inadvertent movement of CA3 rolls during cleaning (CCR3314(c), and failure to provide guards or protection of exposed sides of moving chrome rolls (CCR4187(a)). Ultimately the charges were resolved by stipulation and Order March 21, 2017.

Considering allegations of serious and willful misconduct of the employer under Labor Code Sections 4553 and 4553.1, this WCJ took note of requirements necessary to meet applicant's burden of proof including establishing the employee's knowledge of a dangerous condition, knowledge of a probable consequence of serious injury, and failure to take corrective action (Johns-Mansville Sales Corp. v. WCAB (Horenberger) (1979) 44 CCC 878, 883). Moreover, when alleging violation of safety order to support serious and willful misconduct under Labor Code Section 4553.1, there must be showing of specific manner in which the safety order was violated, that such violation proximately caused the injury, the manner of such causation, that the safety order/conditions were known to the employer or conditions were obvious, and that the failure of the employer to correct the condition constituted a reckless disregard for the probable consequence.

IV DISCUSSION

In the present matter, the parties offered testimony of witnesses raising question as to whether there were prior mechanical issues with extruder machine CA3, and whether the employer/supervisors/management were aware of these issues. Specifically, applicant was injured when cleaning rollers which were moving during the cleaning process and with a roller closing or dropping on applicant resulting in her injury. Applicant produced testimony of witnesses at hearings maintaining that there were episodes of rollers both opening and closing prior to applicant being injured and with management and supervisors having been placed on notice of such issues. Witness, Jorge Loaiza, testified at hearing on November 2, 2022, that back in 2016, and prior to applicant's injury, there were issues pertaining to hydraulics with rollers opening and closing on their own ranging from 15-20 occasions with hydraulics and sensors

failing (MOH 11/2/2022 page 4, lines 22-25). Witness Loaiza further maintained that supervisors were aware of the problem including manager, Ed, and with discussions regarding resolving the problem and yet with no resolution (MOH 11/2/2022, page 5, lines 1-3). The opening and closing of rolls were discussed at general meetings attended by other supervisors or managers including Tim Rowels (technical manager), Doug Nguyen and safety coordinator Edgar, and with advice that maintenance would be working on the issue (MOH 11/2/2022 page 8, lines 11-16), and again with no resolution. Applicant, Cynthia Vasquez, testified at hearing on December 13, 2022, that she complained of rollers opening and closing anywhere from 4-7 occasions and with complaints directed specifically to Alex in the maintenance department, and again with the problem never resolved (MOH 12/13/2022, page 8, lines 18-21). She further testified that she discussed the problem with the production manager, Ed Griffith and Tim Rowles (MOH 12/13/2022, page 9, lines 1-3). This testimony is further supported by testimony of witness and co-worker Anna Stebbens who recalls prior incidents of rollers opening and closing without being shut off, and Ms. Stebbens complaining to her supervisor Lubia (Alonso), to Tim (Rowles), Ed Griffith (production manager) and Dung Nguyen, and again with nothing being done to correct the ongoing problem (MOH 3/21/2023 page 13, lines 9-13). Defendant petitioner has questioned the credibility particularly of witnesses Loaiza and Stebbens noting that each individual had been terminated by Sabert for cause. To the contrary, this WCJ found such witnesses to be credible notwithstanding such termination. This WCJ takes note that petitioner did not offer testimony of any of the individuals noted above including Tim Rowles, Doug Nguyen, Ed Griffith or Lubia Alonzo who purportedly received prior complaints or warnings opening and closing of rollers on CA3. This WCJ takes further note of testimony of Ms. Stebbens regarding her termination which ironically was alleged to occur on the same day that CAL/OSHA was interviewing witnesses (MOH 3/21/2023, page 14, lines 6-7). To rebut applicant's allegations of prior roller opening and closing complaints without resolution, petitioner has offered documents including work orders not reflecting roller closing re: CA3 and testimony of plant manager, Stewart Gallaher who was unaware of such prior complaints of CA3 rollers closing by themselves, and if such complaints were communicated they would be reflected in work orders (MOH 3/21/2023 page 4, lines 17-20). Notwithstanding testimony of Mr. Gallaher, this WCJ took further note of deposition testimony of "safety lead" Edgar Torres dated April 13, 2022 (Defendant's Exhibit F) further supporting a history of rolls opening and closing on one side only based on information provided by Dung (Nguyen) (pages 47-48) and further prior malfunction of the E-Stop (pages 51-52).

To further address the serious and willful issue, history of Sabert's policies leading up to applicant's injuries and subsequent to the injury has particular impact as to whether Sabert acted in a willful manner. The record established that at the time of applicant's injury on October 24, 2016, rollers were running on the extruder CA3 during cleaning process. Subsequent to the injury and CAL/OSHA investigation, procedures were changed with rolls to be stopped and open during cleaning, blocks to be placed between rolls, and with a supervisor to be present during the cleaning procedure. In review of the extruder manufacturer (Reifenhauser) handbook (contained in Joint Exhibits A & C) and Section 4.3, there is clear warning in the extrusion line of danger of being pulled in by rotating polishing rolls, rotating post-cooling rolls, haul off rolls, and rotating

rolls (Joint Exhibit A, page 0270). Further, and in reference to electrical notes of the same page, repair and maintenance work may be performed when machinery is switched off (voltage free) and by a qualified electrician. In reference to the polishing stack and specifically referring to “Dangerous Spots and Safety Devices”, warning is provided in Section 1.1 of handbook of dangers of getting burnt on heated rolls, being pulled in the rolls, and being crushed. (Joint Exhibit A page 0311; Joint Exhibit C, page 3). Further instruction directs “The cleaning of the rolls may be carried out only when the machine is not in operation.” Importantly, Sabert’s own Environmental Health and Safety Procedure further titled Control of Hazardous Energy (Lockout Tagout) Procedure (Joint Exhibit A, pages 0206-0216) sets forth guidance to Sabert employees to protect themselves from serious injury or death that could result from unexpected release of energy while servicing or maintaining equipment or machinery. The policy clearly establishes an origin date of 01/01/2010 and which apparently was in effect at the time of injury. In reference to sections 1.3, 1.4 and 1.5 of Sabert’s policy (Joint Exhibit A, page 0206), the procedure was to be followed to ensure that machine or equipment is stopped, isolated from hazardous energy sources or locked out during servicing or maintenance of machines or equipment. Based on manufacturer Reifenhauer’s instructions and Sabert’s own safety policies, extruder CA3 should have been stopped or disengaged during the roller cleaning process.

Notwithstanding polices noted above, in review of the exhibits and testimony offered at hearings, it became apparent that Sabert did not follow instructions of the extruder manufacturer Reifenhauer or even its own policies. Testimony of witness Anna Stebbens at hearing on March 21, 2023, suggested a change in Sabert policy over the years, and prior to applicant’s injuries. In noting that she was employed by petitioner from 2004 to 2017, in her early years of employment she was trained and would clean extruder rollers when they were stopped and not running, and which appeared to be in compliance with safety measures in place and noted above. She testified that approximately in 2010 procedures were changed to where she was instructed to clean rollers while running. She was advised of this change for reasons that the extruder took too long to heat up (MOH 3/21/2023 page 12, lines 11-19). Witness Lisa Phillian, a hired expert testifying on behalf of applicant, similarly testified that she understood that prior to 2010 such equipment was shut down during cleaning, and that after 2010 rollers were to be running during cleaning to reflect a faster recovery time. She based her testimony on both testimony of applicant and conversations she had with witness Edgar Torres (MOH 5/1/2023, page 7, lines 11-13). Clearly, Sabert’s own policy in effect at the time of injury reflect cleaning while the chrome rollers were moving. In this regard, this WCJ took note of further documentary evidence including Sabert Extrusion-Cleaning Chrome Rolls WIEX-204, 4/24/2012 (Joint Exhibit A, page 0103). In reference to this document, the extruder is initially shut down with top and bottom rolls to be opened with pull roll opened and then rolls to be started at maximum speed with cleaning to commence. This procedure appears contrary to instructions provided by the manufacturer Reifenhauer instruction that cleaning of roller is to be performed when machine is not in operation and to Sabert’s own safety directives dating back to 2010. While this WCJ recognizes testimony of petitioner witness Stewart Gallaher that cleaning was to be performed when machine is not in operation, the witness maintained that “in operation” is in reference to actual

process of product being manufactured (MOH 3/21/2023, page 3, lines 14-17) as opposed to the machine being shut down or disengaged while cleaning. Giving due consideration to all exhibits and evidence noted above, this WCJ accepts applicant's argument that not "in operation" goes beyond manufacturing and to include shutting down and disengagement of extruder CA3 during cleaning of extruder rolls or rollers.

Giving due consideration to the above, this WCJ determined applicant's witnesses' testimony to be credible and notwithstanding any basis for witnesses' employment being terminated by Sabert. While acknowledging that Sabert's extruder maintenance work order records (Defendant's Exhibit C & D) do not reflect specific reporting of or repair/maintenance of rolls dropping, witnesses identified above did maintain that such events were reported to specific supervisory or management individuals noted above, and with the problem of opening and closing rollers while cleaning remaining either unaddressed or unresolved. Clearly both Reifenhauer's handbook and Sabert's own environmental health and safety policies in existence, and discussed above, acknowledged risks of either injury or even death in violating protocols. The record appears to establish that years prior to applicant's injury petitioner did follow its own safety procedures with cleaning of extruder rolls when rolls were stopped and not running. Prior to applicant's injury the procedure apparently was changed with cleaning to proceed when rolls were started at "maximum speed". Petitioner argues that notwithstanding such procedures, there was no evidence of prior injury, and therefore such injury would be unpredictable, and therefore petitioner's conduct/procedures should not be considered "willful" as contemplated under the labor code. This WCJ disagrees with this argument. To the contrary, and based on the safety policies and procedures discussed above, departure from such procedures quite predictably would result in serious injury and as further evidenced by injury sustained by applicant. At very least petitioner, Sabert, apparently ignored safety policies and safety codes. This is further emphasized in CAL/OSHA's investigation and determination of safety violations, two of which were determined "serious". While CAL/OSHA did not label those violations as being "willful", this WCJ determined that petitioner's choice to either not adhere to or depart from safety standards and precautions detailed above as being "willful". The record established petitioner's knowledge of danger with deliberate failure to protect its employees by changing policy and requiring cleaning of tolls while running. This WCJ determined that petitioner's disregard went beyond negligence (see Mercer v. Fraser Co. v. IAC (Soden) (1953) 18 CCC 3, 11-12). Petitioner's departure or change of cleaning policy is willful. Violation of safety orders noted by CAL/OSHA by failing to block or stop movement of the rolls during cleaning process proximately resulted in applicant's injury. Such safety orders noted above were certainly known to petitioner as such knowledge was incorporated by the original safety guidelines encompassed in Sabert's own policies and guidelines set forth by Reifenhauer. Petitioner argues that applicant's attention was distracted during the cleaning procedure leading up to time of injury or contributing to the injury. While this WCJ questions whether there is actual evidence of distraction, had the safety standards been followed and the machine been mechanically stopped or disengaged the incident and injury would not have occurred and regardless of applicant having turned her head or looking to one side during cleaning procedure (MOH 12/13/2022 page 8, lines 3-5).

V
RECOMMENDATION

For reasons set forth above it is recommended that petitioner's Petition for Reconsideration be denied.

DATE: 9/18/2023

Jeffrey Wilson
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

OPINION ON DECISION

Cynthis Vasquez, a 54 year old machine operator, sustained injury arising out of and in the course of her employment to her arm, fingers and nervous system while employed by Saebert Corporation on October 24, 2016. The case in chief was resolved by way of a Joint Compromise and Release (including ADJ10753054) with Order Approving Compromise and Release on August 17, 2021. The issues now before the Board are whether the injured worker is entitled to additional benefits against Saebert Corporation alleging serious and willful misconduct of the employer under Labor Code Section 4553 and attorney fees.

The matter proceeded to hearings before Administrative Law Judge (WCJ) Jeffrey Wilson on November 2, 2022, December 13, 2022, March 21, 2023, May 1, 2023 and May 31, 2023, Testimony was offered on behalf of applicant to include applicant, Jorge Loaiza, Frances Kingston, Anna Stebbens, and Lisa Phillian. Defendant produced testimony of witness Stewart Gallaher.

Preliminarily, and at hearing on November 2, 2022, defense counsel objected to admissibility of applicant's Exhibits 1 through 7 arguing generally that Exhibits 1-4 were not previously disclosed and lack authenticity. Review of pre-trial conference statement does reflect prior disclosure of these exhibits and with this WCJ now admitting such exhibits into evidence. Regarding signed declarations of witnesses (Exhibits 5, 6, and 7), such witnesses did testify at hearings and with such testimony relevant, and with witnesses subject to cross-examination. As defendant did not participate in the signed declarations, these exhibits are not accepted into evidence. At hearing on December 13, 2022 applicant's counsel objected to admissibility of Defendant's Exhibit D (maintenance work orders) pertaining to a machine unrelated to applicant's injuries. This exhibit is now admitted into evidence. Notwithstanding question as to the relevancy, there was testimony at hearing referring to this machine as well as the machine at which applicant was injured. Further, at hearing on May 1, 2023 defendant offered disciplinary records of witness Ana Stebbins which had been objected to arguing non-disclosure. As the witness did testify and admit to discipline, this WCJ will now allow the records into evidence as Defendant's Exhibit G.

In addressing the issue of alleged serious and willful misconduct of the employer, there are certain facts which are considered. Firstly, applicant sustained very serious admitted injury on October

24, 2016, resulting in loss of her right upper extremity and partial amputation of left hand fingers. At that time applicant was in the process of cleaning rolls or rollers in an extruder machine identified as CA3. The machine contains three rollers. Purportedly the rollers were running and open during the cleaning process and with a roll closing on applicant's cleaning rag, jacket, and eventually pulling applicant inwards through her right side and with applicant caught inside the rollers. Apparently, the machine contains safety warnings and devices (E-stop) which applicant maintains she attempted to engage, and yet which did not function at that time. Eventually CAL/OSHA performed an inspection including interviewing various witnesses and cited the employer Sabert Corporation with several safety violations including, but not limited to, T8CCR 3203(a)(4), T8CCR 3314(c), T8CCR 4187. Importantly, violations of T8CCR 3314(c) and T8CCR 4187 were termed or described by CAL/OSHA as being "serious". Generally, CAL/OSHA determined that the employer had not effectively implemented its own injury/illness prevention plan or properly identified or evaluated potential hazards (CCR 3203(a)(4), failed to provide disengagement, de-energization, of mechanically block or stop inadvertent movement of CA3 rolls during cleaning (CCR 3314(c), and failure to provide guards or protection of exposed sides of moving chrome rolls (CCR 4187(a). Ultimately the charges were resolved by stipulation and Order 3/21/2017.

Considering allegations of serious and willful misconduct of the employer under Labor Code sections 4553 and 4553.1, this WCJ takes note of requirements necessary to meet applicant's burden of proof including establishing the employer's knowledge of a dangerous condition, knowledge of a probable consequence of serious injury, and failure to take corrective action (Johns-Manville Sales Corp. v. WCAB (Horenberger)(1979) 44 CCC 878, 883). Moreover, when alleging violation of safety order to support serious and willful misconduct under Labor Code Section 4553.1, there must be a showing of specific manner in which the safety order was violated, that such violation proximately caused injury and the manner of such causation, and that the safety order/conditions were known by the employer or the condition was obvious, and that the failure of the employer to correct the condition constituted a reckless disregard for the probable consequences.

In the present matter, the parties offered testimony of witnesses raising question as to whether

there were prior mechanical issues with the extruder machine CA3 and whether the employer/supervisors/management was aware of these issues. Specifically, applicant was injured when cleaning rolls which were moving and with a roller closing or dropping on applicant during the cleaning process. Applicant produced testimony of witnesses at hearings maintaining that there were prior episodes of both opening and closing of rolls before the injury and with the employer representatives placed on notice. Jorge Loaiza testified at hearing on November 2, 2022 that back in 2016 there were issues pertaining to the hydraulics with rollers opening and closing on their own ranging from 15-20 occasions with hydraulics and sensors failing (MOH 11/2/2022 page 4, lines 22-25) Witness Loaiza further maintained that supervisors were aware of the problem including a manager, Ed and with discussions regarding resolving the problem, and yet with no resolution (MOH 11/2/2022 page 5, lines 1-3). The opening and closing of rolls were purportedly discussed at general meetings attended by other supervisors or managers including Tim Rowels (technical manager), Dung Nguyen and safety coordinator Edgar, and with advice that maintenance would be working on it (MOH 11/2/2022 page 8, lines 11-16), and again with no resolution. Applicant, Cynthia Vasquez, testified at hearing on December 13, 2022, that she complained of rolls opening and closing anywhere from 4-7 times, and with complaints directed specifically to Alex in the maintenance department, and with the problem never resolved. (MOH 12/13/2022, page 8, lines 18-21). She maintains that she further discussed the problem with the production manager, Ed Griffith and Tim Rowles (MOH 12/13/2022, page 9, lines 1-3). This testimony is further supported by testimony of co-worker Anna Stebbins who recalls prior incidents of rolls opening and closing without being shut off, and with the witness complaining to her supervisor Lubia and to Tim, Ed Griffith and Dung Nguyen, and again with nothing being done to correct the problem (MOH 3/21/23, page 13, lines 9-13). Deposition testimony of then “safety lead” Edgar Torres dated April 13, 2022 (Defendant’s Exhibit F) further supports a history of rolls opening and closing on one side only and based on information provided by Dung (pages 47-48) and further malfunction or non-function of the E-stop (pages 51-52). This WCJ takes note that defendant did not offer testimony of witnesses mentioned above including Tim Rowels (extrusion manager), Dung Nguyen, Ed Griffith (production manager) or Lubia Alonzo. Defendant did present testimony of the then plant manager Stewart Gallaher who was unaware of any prior complaints re CA3 rolls closing by themselves, and if such complaints were made, they would be reflected in work order (MOH 3/21/2023, page 4, lines 17-20). Exhibits offered into

evidence by defendant including various work orders do not reflect closing of rolls re: CA3.

To further address the serious and willful issue, this WCJ takes note of Sabert policies and procedures in effect prior to applicant's injuries and history of such policy. Generally, the record establishes that at the time of applicant's injury on October 24, 2016, rolls or rollers were running on the extruder CA3 during the cleaning process. Subsequent to applicant's injuries and CAL/OSHA investigation, procedures were changed with rolls to be stopped and open during cleaning, blocks to be placed between rolls, and with a supervisor present during the cleaning procedure. In review of the extruder manufacturer (Reifenhouser) handbook (Joint Exhibits A & C), there is clear warning in the extrusion line of danger of being pulled in by the rotating polishing rolls, rotating post-cooling rolls, haul off rolls, and rotating rolls (Section 4.3). Further, and in reference to electrical notes, repair and maintenance work may be performed when machinery is switched off (voltage free) and by a qualified electrician. In reference to the polishing stack and specially referring to "Dangerous Spots and Safety Devices" warning is provided re: dangers of getting burnt on the heated rolls, being pulled in the rolls, and being crushed (1.1). Further instruction directs "The cleaning of the rolls may be carried out only when the machine is not in operation." This WCJ takes further note of Sabert's own Environmental Health and Safety Procedure further titled Control of Hazardous Energy (Lockout Tagout) Procedure (Origin Date 01/01/2010) in effect at time of injury. Section 1.1 sets forth guidance to Sabert employees to protect themselves from serious injury or death that could result from unexpected release of energy while servicing or maintaining equipment or machinery. In reference to sections 1.3, 1.4 and 1.5, the procedure is used to ensure that machine or equipment is stopped, isolated from hazardous energy sources or locked out during servicing or maintenance of machines or equipment. Clearly, and based on Reifenhouser's instructions and Sabert's own safety policies, the machine in question should have been stopped or disengaged during the cleaning process.

In further review of the exhibits and testimony offered at hearings, it is apparent that Sabert did not follow instructions of the manufacturer or even its own policies. Testimony of witness Anna Stebbens at hearing on March 21, 2023, suggests a change in policy over the years. Ms. Stebbens testified that she was employed by defendant from 2004 to 2017. Early in her employment she would clean rolls when they were stopped and not running, and which appears in compliance with

safety measures in place. Approximately in 2010 procedures changed to where she was instructed to clean rollers while running. She was advised of this change as the extruder took too long to heat up (MOH 3/21/2023, page 12, lines 11-19). Witness Lisa Phillian, a hired expert testifying on behalf of applicant, similarly testified that she understood that prior to 2010 such equipment was shut down during cleaning, and that after 2010 rollers were running during cleaning to reflect a faster recovery time. She based her testimony on testimony of applicant and conversations that she had with witness Edgar Torres (MOH 5/1/2023, page 7, lines 11-13). Clearly, Sabert's own policies in effect at the time of applicant's injuries reflect cleaning while the chrome rolls are moving. In reference to WIEX- 204 dated 4/24/2012 (contained in Joint Exhibit A), the extruder is initially shut down with top and bottom rolls to be opened with pull roll opened and then rolls to be started at maximum speed with cleaning to commence. This procedure appears contrary to instructions provided by Reifenhouser and to Sabert's own directives dating back to 2010. Defense witness, Stewart Gallaher (plant manager at time of injury) did acknowledge Reifenhouser's warning that "work on the rolls, in particular the cleaning of the rolls, may be carried out only when the machine is not in operation". However, the witness testified that non-operation refers to when a product is not actually in the process of being manufactured (MOH 3/21/2023, page 3, lines 14-17) as opposed to the machine being shut down or disengaged.

Giving due consideration to the above, this WCJ does find applicant's witnesses' testimony to be credible and notwithstanding any basis for witnesses termination of employment by Sabert. Clearly, and as noted above, both Reifenhouser's handbook and Sabert's own environmental health and safety policies in existence acknowledged risks of either injury or even death. It appears that early on defendant did follow its own safety procedures with cleaning of extruder rolls when the rolls were stopped and not running. Prior to applicant's injury the procedure apparently was changed, with cleaning to proceed when the rolls were started at maximum speed. Whereas defendant may argue that notwithstanding these procedures there was no evidence of prior injury during this process and therefore applicant's injury would be unpredictable, and therefore Sabert's conduct/procedures should not be determined to be serious and willful as contemplated under the Labor Code. To the contrary, and based on policies and procedures set forth above, this WCJ determines that departure from such procedures quite predictably would result in serious injury and as further evidenced by injuries sustained by applicant. Further, the policies and procedures

noted above would be created to avoid such injury occurring. At very least defendant apparently ignored safety policies and safety codes. Additionally, CAL/OSHA performed its own investigation and determining safety violations, two of which were determined “serious”. While not labeling those violations as being “willful”, this WCJ does determine defendant’s choice to either not adhere to or depart from safety standards and precaution as being willful. Sabert’s departure or change of cleaning policy is considered willful. Violation of safety orders noted above by failing to mechanically block or stop movement of the rolls during cleaning proximately resulted in applicant’s injury. Such safety orders noted above were certainly known to the employer, as such knowledge was incorporated by the original safety guidelines encompassed in Sabert’s own policies and guidelines set forth by manufacturer Reifenhouser.

Based on the above, this WCJ finds Sabert’s conduct as being serious and willful resulting in applicants injuries, and with applicant entitled to 50% of all compensation and benefits including all indemnity benefits, medical treatment payments, medical legal fees and any further sums contemplated under the original compromise and release. Further applicant’s attorney has provided reasonable services and is entitled to 15% of applicant’s recovery.

DATE: 8/8/2023

Jeffrey Wilson
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE