

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

In the Matter of the Appeal of:

**HOME DEPOT U.S.A., INC.
dba THE HOME DEPOT RDC 5642
2455 PACES FERRY ROAD, D17
ATLANTA, GA 30339**

Employer

Inspection No.

1330738

DECISION

Home Depot U.S.A., Inc, dba, The Home Depot RDC 5642 (Employer), is a warehouse distribution center for the Home Depot home improvement stores. Beginning July 17, 2018, the Division of Occupational Safety and Health (the Division), through Associate Safety Engineer Patrick McDonagh (McDonagh), conducted a programmed inspection of the distribution warehouse located at 5655 Ontario Mills Parkway in Ontario, California, (the warehouse).

On August 7, 2018, the Division issued Employer two citations, one of which is at issue - failure to provide a means to prevent an employee's feet from coming into contact with a conveyor when using a crossover as defined by section 3207.¹

Employer contests the existence of the violation, the classification, the abatement requirements, and the reasonableness of the proposed penalty. Employer also asserted a series of affirmative defenses.²

This matter was heard by Leslie E. Murad, II, Administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board. On December 3, 2020, ALJ Murad conducted the hearing from Highland, California, with the parties and witnesses appearing remotely via the Zoom video platform. Attorneys, Matthew Deffebach and Mini Kapoor of Haynes and Boone, LLP, represented Employer. Martha Casillas, staff counsel, represented the Division. The matter was submitted on February 1, 2021.

¹ Unless otherwise specified all citations will be to title 8 of the California Code of Regulation.

² Except where discussed in the 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).)

Issue

Did Employer fail to ensure that the feet of employees did not touch the conveyor when using the crossover stepping stones (walking pads) system Employer had in place which met the requirements of a crossover as defined by section 3207?

Findings of Fact

1. The Employer was Home Depot U.S.A., Inc.
2. The Division had jurisdiction and the Employer consented to the inspection.
3. The citations were timely issued, the appeal forms were timely filed and amended by motion and order.³
4. Employer had in place and in use a crossover system that used a ladder, handrails and raised diamond-studded stepping stones (walking pads), as defined in section 3207, subdivision (a).
5. Employee's feet were not exposed to contacting the conveyor belt when crossing over the conveyor by use of the stepping stones crossover system.

Analysis

Did Employer fail to ensure that the feet of employees did not touch the conveyor when using the crossover stepping stones (walking pads) system Employer had in place which met the requirements of a crossover as defined by section 3207?

Section 3999, subdivision (c), provides:

Crossovers as defined in Section 3207 of these orders shall be provided where necessary, which will allow employees to pass over or cross a conveyor. Unless a 6-foot 6-inch headroom clearance is provided, employees shall not be permitted to pass under conveyors.

Citation 1, Item 2, alleges:

Prior to and during the course of the inspection, including but not limited to, on July 17, 2018, employees on the upper mezzanine were permitted to crossover the conveyor lines. There was no means to preventing employees' feet from coming into contact with the conveyors. These crossovers do not meet the crossover definition as defined in Section 3207 of these orders.

Section 3207, subdivision (a), provides in its relevant part:

Crossover. A means to allow employees to pass over or cross a horizontal belted or live roller conveyor without the employee's feet from coming into contact with moving or movable elements of the conveyor. Such a means shall include, but are not limited to, catwalks as specified in Section 3273 of these Orders, non-

³ Findings of Fact 1, 2 and 3, were stipulated to by the parties.

continuous, slip resistant (e.g., raised diamond-studded) metal “stepping stones” (e.g., “walking pads”), or replacing conveyor rollers with continuance parallel metal strip walking surfaces (“crosswalks”).

The Division has the burden of proving a violation by a preponderance of the evidence. (*ACCO Engineered Systems*, Cal/OSHA App. 1195414, Decision After Reconsideration (Oct. 1, 2019).) "Preponderance of the evidence" is usually defined in terms of probability of truth, or of evidence that when weighed with that opposed to it, has more convincing force and greater probability of truth with consideration of both direct and circumstantial evidence and all reasonable inference to be drawn from both kinds of evidence. (*Timberworks Construction, Inc.*, Cal/OSHA App. 1097751, Decision After Reconsideration (Mar. 12, 2019).)

The Division called as its only witness Associate Safety Engineer McDonagh. McDonagh testified that he went to Employer’s warehouse as a result of a programmed inspection on July 17, 2018. He observed a complex set of conveyors. McDonagh took photographs. Photograph Exhibit 4 shows the crossover system that Employer had in place at the time of the inspection. McDonagh was of the opinion that a person’s feet could still possibly touch the conveyor belt. However, McDonagh also testified that the crossover system at Employer’s warehouse was in compliance with section 3207 as a stepping stone crossover. “I cannot trigger a violation related to this crossover definition, based on the crossovers at Home Depot.” (Hearing transcript, 72, 21-23.) McDonagh further testified that the Employer’s crossover as depicted in Exhibit 4 was in compliance with Section 3207 and was provided, as necessary, by Employer pursuant to section 3999, subdivision (c). (Hearing transcript, 93, 9-25.)

The witnesses called by Employer, David Bell, National Manager for Health, Safety and Environment, Taylor Maupin, Asset Protection Manager for the warehouse, John Chiaravalle, Regional Maintenance Manager for the west, and Domenick Zackeo, Employer’s Environmental Health and Safety Consultant all testified that the crossover system in use was safe. No one disagreed with McDonagh’s conclusion that the crossover system in use was in compliance with the cited regulation.

The Division has the burden of proving each element of its case, including the applicability of the safety order. (*Coast Waste Management, Inc.*, Cal/OSHA App. 11-2385, Decision After Reconsideration (Oct. 7, 2016).) Based on the evidence presented, the Division has failed to prove its case. The testimony provided proved by a preponderance of the evidence that the crossover system used by Employer met the requirements of section 3207. As such, there can be no finding of a violation of section 3999, subdivision (c).

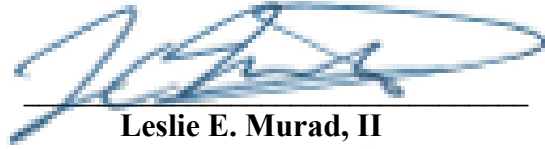
Conclusion

The Division failed to establish that the crossover system in use by Employer violated section 3999, subdivision (c).

Order

It is hereby ordered that Citation 1, Item 2, is dismissed

Dated: 03/02/2021



Leslie E. Murad, II
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.**

**APPENDIX A
SUMMARY OF EVIDENTIARY RECORD**

Inspection No.: **1330738**

Employer: **HOME DEPOT U.S.A., INC. dba THE HOME DEPOT RDC 5642**

Date of hearing(s): December 3, 2020.

DIVISION'S EXHIBITS

Exhibit Number	Exhibit Description	Status
1	Jurisdictional Documents (Combined)	Admitted Into Evidence
4	Photo by CSHO number 2190: cross over at issue	Admitted Into Evidence
5	Photo by CSHO number 2246: cross over at issue, another angle	Admitted Into Evidence
6	Photo by CSHO number 2270: objects on conveyors	Admitted Into Evidence
7	Field Documentation Worksheet (field notes and measurements)- 9 pages	Admitted Into Evidence
8	Narrative Summary	Admitted Into Evidence
9	Evidence Grid	Admitted Into Evidence
10	C-10 penalty worksheet	Admitted Into Evidence
12	Reg 3999	Admitted Into Evidence
13	Reg 3207	Admitted Into Evidence

EMPLOYER'S EXHIBITS

Exhibit Letter	Exhibit Description	Status
J	Ad for Crossover Walk Plate for Roller Conveyor	Admitted Into Evidence
L	Emails	Admitted Into Evidence
Y	THD Ontario RDC-5642 Crossover Study	Admitted Into Evidence
Z	Conveyor Crossover Safety Training	Admitted Into Evidence
AA	Conveyor Crossover Safety Training Sign Up Sheet	Admitted Into Evidence
BB	Nick Zackeo Resume	Admitted Into Evidence

Witnesses testifying at hearing:

Dominick Zackeo

John Chiaravalle

Taylor Maupin

David Bell

Patrick McDonagh

Vice President of Arcadis, Inc.,
Environmental Health and Safety
Consultant

Regional Maintenance Manager for the
West for Home Depot

Asset Protection Manager for Ontario
Home Depot RDC

Manager of Health, Safety and
Environment for Home Depot Corp.

DOSH Assoc. Safety Engineer/Inspector

**APPENDIX A
CERTIFICATION OF HEARING RECORD**

Inspection No.: **1330738**

Employer: **HOME DEPOT U.S.A., INC. dba THE HOME DEPOT RDC 5642**

I, Leslie E. Murad, II, the California Occupational Safety and Health Appeals Board Administrative Law Judge duly assigned to hear the above-entitled matter, hereby certify the proceedings therein were electronically recorded or recorded by a certified court reporter. If the proceedings were recorded electronically, the recording was periodically monitored during the hearing. Either the electronic recording or the recording made by a certified court reporter constitutes the official record of the proceedings, along with the documentary and other evidence presented and received into evidence during or after the hearing. To the best of my knowledge the recording equipment, if utilized, was functioning normally and exhibits listed in this Appendix are true and correct, and accurately represent the evidence received during or after the hearing.



Leslie E. Murad, II

03/02/2021

Dated

SUMMARY TABLE

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

In the Matter of the Appeal of: HOME DEPOT U.S.A., INC. dba THE HOME DEPOT RDC 5642	Inspection No. 1330738
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Citation Issuance Date: **08/07/2018**

C I T A T I O N	I T E M	SECTION	T Y P E	CITATION/ITEM RESOLUTION	A F F I R M E D	V A C A T E D	PENALTY PROPOSED BY DOSH IN CITATION	FINAL PENALTY ASSESSED
1	2	3999 (c)	G	Citation dismissed. Appeal granted.		V	\$750.00	\$0.00
Sub-Total							\$750.00	\$0.00

Total Amount Due* **\$0.00**

**You may owe more than this amount if you did not appeal one or more citations or items containing penalties.
Please call (415) 703-4291 if you have any questions.*

PENALTY PAYMENT INFORMATION

1. Please make your cashier's check, money order, or company check payable to:
Department of Industrial Relations

2. Write the **Inspection No.** on your payment

3. If sending via US Mail:
 CAL-OSHA Penalties
 PO Box 516547
 Los Angeles, CA 90051-0595

If sending via Overnight Delivery:
 US Bank Wholesale Lockbox
 c/o 516547 CAL-OSHA Penalties
 16420 Valley View Ave.
 La Mirada, CA 90638-5821

Online Payments can also be made by logging on to http://www.dir.ca.gov/dosh/CalOSHA_PaymentOption.html

-DO NOT send payments to the California Occupational Safety and Health Appeals Board-

Abbreviation Key:

G=General	R=Regulatory	Er=Employer	
S=Serious	W=Willful	Ee=Employee	A/R=Accident Related
RG=Repeat General	RR=Repeat Regulatory	RS=Repeat Serious	