

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

*In the Matter of the Appeal of:*

**SEARS ROEBUCK & CO.**  
8150 La Palma Avenue  
Buena Park, CA 90620

Employer

**DOCKET 13-R3D1-0598**

**DECISION**

**STATEMENT OF THE CASE**

Beginning on July 10, 2012, the Division of Occupational Health and Safety (the Division) through Associate Safety Engineer, Frances Loke (Loke) commenced an investigation at a place of employment maintained by Sears & Roebuck & Co. (Employer) at 8150 La Palma Avenue, Buena Park, California (the site). On August 15, 2012, the Division cited Employer for failing to report a serious injury within eight hours or within 24 hours.

Employer filed a timely appeal contesting the existence of the alleged violation.

This matter came on regularly for hearing before Clara Hill-Williams, Administrative Law Judge for California Occupational Safety and Health Appeals Board, at West Covina, California on April 3, 2014. Attorney Jeremiah Levine represented Employer. District Manager, Richard Fazlollahi represented the Division. The parties presented oral and documentary evidence which is listed in the certification of record<sup>1</sup>. The ALJ extended the submission date to October 27, 2014, on her own motion.

**ISSUES**

1. Did Employee, Edward Saunders (Saunders) suffer a serious injury/illness at the workplace which required Employer to report within eight hours or within 24 hours?

---

<sup>1</sup> Exhibits received and testifying witnesses are listed on Appendix A. Certification of the Record is signed by the ALJ. Unless otherwise specified, all section references are to Sections of Title 8, California Code of Regulations.

2. Should a \$5,000 penalty be imposed as a result of Employer's failure to report the serious injury/illness?

### **Findings of fact**

1. Edward Saunders was an employee working in Employer's auto repair center.
2. On June 24, 2012, Employer was aware that Employee had been taken to the hospital at 2:57 p.m., after complaining of chest pains at work.
3. Employee's illness was not work related.
4. On June 24, 2012, Employer's safety coordinator Frans Prosper contacted the hospital to determine Saunders's condition and treatment. The hospital refused to release that information to Employer<sup>2</sup>.
5. On the morning of June 25, 2012, Saunders told Employer's supervisor, Amed Aguilar that he felt fine and was at the hospital for observation.
6. The Employee was hospitalized for more than 24 hours; from June 24, 2012 through June 26, 2012.
7. Employer did not report Employee's illness to the Division.

### **ANALYSIS:**

- 1. Did employee, Edward Saunders (Saunders) suffer a serious injury/illness at the workplace which required Employer to report within eight hours or within 24 hours?**

The Division cited Employer for a violation of section 342(a) which states:

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 employer.

A serious illness as defined under Section 330(h) in pertinent part, defines serious illness as one "occurring in a place of employment or in connection with any employment which requires inpatient hospitalization for a period in excess of 24 hours for other than medical observation[.]"

---

<sup>2</sup> ALJ Hill-Williams took official notice of Federal Regulations – HIPPA: Hospital cannot release private information of patients - Code of Federal Regulation Section 164.502(a) (See Exhibit B)

In citing Employer, the Division specifically alleged “An employee was transported to the hospital from this [*sic*] place of employment on June 24, 2012. This employee was subsequently hospitalized from June 24, 2012 through June 26, 2012. The employer failed to report this to the Division within the time frames noted above.”

Here, Employer stipulated that it did not report Saunders complaint of chest pain to the Division (See Findings of Fact #7).

The Division has the burden of proving each element of its case by a preponderance of the evidence. (*Cambro Manufacturing Co.*, Cal/OSHA App. 84-923, Decision After Reconsideration (Dec. 31, 1986).

In *YNT Harvesting*, Cal/OSHA App. 08-5010, Denial of Petition for Reconsideration (Mar. 14, 2013), the Board considered whether the employer violated section 342(a). The Board reviewed evidence involving an employee that became ill while harvesting nectarines. The employee was first taken to a clinic and provided treatment and then referred to an emergency hospital for more than 24 hours for further testing, diagnosis and treatment. In denying the employer’s Petition for Reconsideration, the Board ruled its role is not to second guess a treating physician but to determine whether the employee suffered a serious injury or illness while at work, and, if so, whether Employer reported the injury or illness to the Division within the required time. In *YNT Harvesting*, *supra*, the Board held the evidence established that the employee suffered a serious illness while working for Employer, which resulted in the employee’s hospitalization for more than 24 hours. During the period of hospitalization the employee received treatment for his condition, establishing a violation of section 342(a).

The factual circumstances presented here differ from *YNT Harvesting*. While there was a medical diagnosis communicated to the employer in *YNT Harvesting*, in this case the Division did not present any evidence establishing treatment or diagnosis. Employer had knowledge that Saunders was taken to the hospital on June 24, 2012 after complaining of chest pain. Employer further contends that Employer was never informed that the illness was serious, which would require Employer to report the illness within eight hours or within 24 hours if Saunders was hospitalized for more than observation. The reason for Saunders’s hospitalization was not disclosed to Employer until the Division’s interview with Saunders on July 10, 2012, when Saunders disclosed that he was given insulin, “oral medication” and treadmill tests. Saunders acknowledged that when he spoke to Aguilar on June 25, 2012, Saunders told Aguilar that he was hospitalized for “observation only”.

Here, Saunders complained of chest pain and was immediately taken to the hospital. Employer made several elaborate attempts to learn whether Saunders was hospitalized for other than observation. When asked, Saunders told Employer he was hospitalized for observation. Employer was further rebuffed by the hospital administration when inquiring as to the nature of

Employee's hospitalization. Unlike *YNT Harvesting, supra*, in this case, Employer, after diligent inquiry, did not have knowledge of the diagnosis of Saunders' chest pain because Employer was unable to verify what occurred during Saunders's three day hospitalization.

In *Rudolph & Sletten, Inc.*, Cal/OSHA App. 99-1291, Denial of Petition After Reconsideration (Jan. 16, 2001), and three subsequent decisions, the Board held that the duty to report applies whether the employer's doubt is as to whether a hospitalization is for observation or treatment, or as in this case, whether the hospital stay will last longer than 24 hours. In a ruling on a writ petition arising from *Rudolph & Sletten, Inc.*, Cal/OSHA App. 99-1291, Denial of Petition for Reconsideration (Jan. 16, 2001), the Board ruled that an employer's reporting obligation under section 342(a) is triggered only when the employer knows or in the exercise of reasonable diligence would have known that a serious injury has occurred to one of its employees. Restated, the reporting obligation is triggered when employer learns, or reasonably could learn, of the serious injury.

In *Cox Communication dba Cox Communications* Cal/OSHA App. 03-1942, Decision After Reconsideration (Dec. 30, 2008), the factual circumstances involved an employee that was injured in a fall of approximately 18 feet from a ladder. The employee was transported to a hospital by ambulance. Two of employer's managerial and/or supervisory staff went separately to the hospital that Friday afternoon. One manager went to the hospital to check on the condition of the employee, whom he located in the "trauma room." A nurse told him the employee had been examined and given a "scan," neither of which revealed broken bones and was told the employee would be kept overnight for observation. The following Saturday morning, another employer manager visited the employee in the hospital and the employee told him that he was to be released later that morning. While it appeared that no surgery had been performed, either later Saturday or on Sunday the employee did in fact have surgery. The manager visiting on Saturday did not speak to any hospital personnel, just the employee and his wife.

The Board held that the employer in *Cox Communication supra*, acted with reasonable diligence and reasonably relied on the information employer received. Given the information the employer received, employer was not required to ask again about the employee later on Saturday or on Sunday. Further, when employer learned after the opening of business on Monday morning that the employee's condition had apparently been re-evaluated and surgery performed, the employer promptly reported the injury to the Division. The Board found employer's duty to report the injury was triggered Monday morning when the employer learned of the serious injury and timely reported the injury. The circumstances here call for application of the Board's ruling in *Rudolph Sletten* and *Cox Communication, supra*. When the employer learns of the probable existence of a serious injury, the duty to report is triggered (See *Welltech* Cal/OSHA App.84, DAR (Aug. 22, 1991). Here, Employer was aware that Saunders had chest pain while he was at work on June 24, 2012 at 2:45 p.m., and taken to the hospital by the paramedics at 2:57 p.m. However, on the

morning of the second day, June 25, 2012, Employer's supervisor, Aguilar, spoke to Saunders, who stated he was only being held for observation and that there was nothing wrong with him. Although Saunders remained hospitalized until released on June 26, 2012 (See Findings of Fact #4), Employer's safety coordinator Frans Prosper contacted the hospital to determine Saunders's condition and treatment but the hospital refused to release that information to Employer (See Findings of Fact #5).

Despite the chest pain Saunders experienced at the worksite on June 24, 2012 and subsequent hospitalization for three days, Employer did not become aware of Saunders's treatment until after he was released from the hospital. Thus, there was never a triggering point for Employer to report the illness. In following the Board's holding in *Rudolph and Sletten* and *Cox Communications*, the triggering event requiring Employer to report the incident to the Division, did not occur because Employer reasonably relied on Saunders' statement that he was only hospitalized for observation, which was not refuted by the hospital.

### **CONCLUSION**

In conclusion, Employer did not violate the safety order.

**IT IS SO ORDERED.**

Dated: November 21, 2014

---

**CLARA HILL-WILLIAMS**  
Administrative Law Judge

CHW: ao

# SUMMARY TABLE DECISION

*In the Matter of the Appeal of:*

**SEARS ROEBUCK & CO.  
DOCKET 13-R3D1-0598**

Abbreviation Key:	Reg=Regulatory
G=General	W=Willful
S=Serious	R=Repeat
Er=Employer	DOSH=Division

IMIS No. 315529990
--------------------

DOCKET	C	I	SECTION	T	ALLEGED VIOLATION DESCRIPTION MODIFICATION OR WITHDRAWAL AND REASON	A	V	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY PROPOSED BY DOSH AT PRE- HEARING	FINAL PENALTY ASSESSED BY BOARD
	I	T		Y		F	A			
	T	E		P		I	A			
	A	M		E		R	T			
	T	I		R		M	E			
	I	O		E		E	D			
	O	N		D		D	D			
13-R3D1-0598	1	1	342(a)	Reg	ALJ finds the safety order was not violated		X	\$5,000	\$5,000	<b>\$0</b>
<b>Sub-Total</b>								\$5,000	\$5,000	<b>\$0</b>
<b>Total Amount Due*</b>										<b>\$0</b>

(INCLUDES APPEALED CITATIONS ONLY)

NOTE: Please do NOT send payments to the Appeals Board.  
**All penalty payments must be made to:**  
 Accounting Office (OSH)  
 Department of Industrial Relations  
 PO Box 420603  
 San Francisco, CA 94142  
 (415) 703-4291, (415) 703-4308 (payment plans)

\*You will 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.

**ALJ: CHW/ao  
POS: 11/21/2014**

**APPENDIX A**

**SUMMARY OF EVIDENTIARY RECORD  
Sears Roebuck & Co  
Dockets 13-R3D1-0598**

**Date of Hearing:** April 3, 2014

**Division's Exhibits**

<b>Exhibit Number</b>	<b>Exhibit Description</b>	<b>Admitted</b>
1	Jurisdictional Documents	Yes
2	C-10 Penalty Worksheet	Yes

**Employer's Exhibits**

<b>Exhibit Letter</b>	<b>Exhibit Description</b>	<b>Admitted</b>
A	Form 36 – Accident report reported by Orange County Fire Authority/EMPLOYEE/WITNESS STATEMENT	Yes
B	Section 164.502 Uses and disclosures of protected health 45 C.F.R. 164.502	Official Notice

**Witnesses Testifying at Hearing**

1. Frances Loke
2. Amed Aguilar

**CERTIFICATION OF RECORDING**

*I, Clara Hill-Williams, the California Occupational Safety and Health Appeals Board Administrative Law Judge duly assigned to hear the above matter, hereby certify the proceedings therein were electronically recorded. The recording was monitored by the undersigned and constitutes the official record of said proceedings. To the best of my knowledge, the electronic recording equipment was functioning normally.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date